a cognizable burden on religious practice and a State has considerable latitude to act within that principle on either side.

iii. Declining to subsidize a religious activity is not an infringement on religious exercise

This Court has repeatedly affirmed a distinction between a refusal to subsidize a protected right from the infringement of a fundamental right—and has generally held that a legislature's decision not to subsidize the exercise of a fundamental right does not infringe the right, and thus is not subject to strict scrutiny. Regan v. Taxation With Representation of Wash., 461 U.S. 540, 549 (1983); see also Lyng v. Automobile Workers, 485 U.S. 360, 368 (1988) ("The Constitution does not require the Government to furnish funds to maximize the exercise of the right of association..." 485 U.S. 364-368).

In Regan, the Court upheld a law that denied a particular tax-exempt status to organizations that engaged in substantial lobbying efforts. 461 U.S. 540 at 542. In recognizing that Congress had merely refused to pay for an organization's lobbying, the Court "reject[ed] the 'notion that First Amendment rights are somehow not fully realized unless they are subsidized by the State," Id. at 546, and held that "a legislature's decision not to subsidize the exercise of a fundamental right does not infringe the right," Id. at 549.

In <u>Rust v. Sullivan</u>, the Court reiterated the same principle from <u>Regan</u> that the denial of funding could not be likened to infringement, holding that "[a] refusal to fund protected activity, without more, cannot be equated with the imposition of a

'penalty' on that activity." 500 U.S. 173, 193 (1991). Rust involved a Department of Health and Human Services regulation that conditioned receipt of "federal funding for family-planning services" on program funds not being used to engage in abortion advocacy or counseling. Id. at 178, 196. The Court rejected the notion that the law predicated funds "on the relinquishment of a constitutional right" and emphasized that, because the law allowed recipients to engage in abortion-related speech or advocacy on their own accord, the law did not run afoul of the First Amendment. Id. at 197.

Together, Regan, Rust, and Locke establish the accepted standard that "[a] refusal to fund protected activity," as in this case, cannot be viewed as penalizing such an activity. 500 U.S. 173 at 193. The "nonsectarian" requirement neither "punishes" a recipient solely for being controlled by, or affiliated with, a religious institution, nor imposes a "penalty" for practicing one's religion. Rather, it limits a government subsidy that the State may permissibly restrict to those schools that provide a curricular analog of public education. Ultimately, Maine may fund nonsectarian education to promote what it has decided to be in the public interest without at the same time funding alternative sectarian education—which can still be pursued independently. In doing so, Maine has not "discriminated on the basis of viewpoint; it has merely chosen to fund one activity to the exclusion of the other." 500 U.S. 173, 193 (1991).

Maine's refusal to fund particular types of education does not burden

Petitioner's right to pursue religious education. Students in SAUs that do not

operate or contract with secondary schools may receive tuition-assistance payments for nonsectarian schools and separately pursue religious instruction. Section 2951(2) does not force students or parents "to choose between their religious beliefs and receiving a government benefit." 540 U.S. at 720-721. With or without Maine's program, religious parents and students are faced with the same choice: picking public education or religious, sectarian education. Even if some members of this Court view "free exercise" as encompassing "be[ing] a religious person" and "act[ing] on those beliefs," 140 S. Ct. 2246, 2276 (2020) (Gorsuch, J., concurring), a State's recognition of a parent's right to act on a particular religious belief does not compel a state to fund that religious activity. Regan, Rust. and Locke confirm that the Free Exercise Clause's protection of religion from direct government encroachment should not be converted into an affirmative obligation that governments fund religious activity simply because they choose to fund the secular alternative to such activities.

B. Maine's Tuition Assistance Program Withstands Strict Scrutiny

Even if the Court were to find that the Free Exercise Clause was burdened in this case, Maine's statute withstands the most exacting forms of scrutiny. Maine's statute was enacted to achieve Maine's compelling state interest in maintaining a uniform, secular public education system and is narrowly tailored to exclude only curriculums that are inconsistent with that state interest.

 Maine's statute was enacted to achieve a uniform, secular public education not out of religious animus Petitioners wrongly suggest that Maine's enactment and retention of Section 2951 reflect hostility to religion or an attempt to burden religious exercise. Maine's constitution has never had a "Blaine Amendment" or "no-aid clause." Section 2951(2) was born out of legal guidance from Maine's Attorney General concluding that "using public funds" to "pay for the tuition of students at sectarian elementary and secondary schools" violated the Establishment Clause. J.A. 65; see J.A. 42-58. As such, Maine's decision not to subsidize pervasively religious instruction reflects a legitimate interest in compliance with the Establishment Clause and avoiding an "essentially religious endeavor," not hostility toward religion. 540 U.S. at 721.

ii. Maine has a compelling state interest in providing a secular public education and is empowered to determine curricular standards for its schools

This Court's precedents have established that the provision of free public education is a State's most prized purview. This Court has long recognized that public education is "perhaps the most important function of state and local governments." Brown v. Bd. of Ed. of Topeka, 347 U.S. 483, 493 (1954). The "American people have always regarded education and [the] acquisition of knowledge as matters of supreme importance." Meyer v. Nebraska, 262 U.S. 390, 400 (1923). Moreover, public schools are the "most vital civic institution for the preservation of a democratic system of government," Sch. Dist. of Abington v. Schempp, 374 U.S. 203, 230 (1963) (Brennan, J., concurring), and are the primary vehicle for transmitting "the values on which our society rests." Ambach v. Norwick, 441 U.S. 68, 76 (1979).

In acknowledgment of the supreme importance of public education, Maine's tuition program safeguards the essential character of public schools by creating the conditions for pluralism through environments of neutrality in the schools it maintains. Maine, like any other State, has an "undoubted right to prescribe the curriculum for its public schools" and has reasonably identified nonsectarian instruction—a universally required feature of public schools across the country—as a fundamental attribute of public education. Epperson v. State of Ark., 393 U.S. 97, 107 (1968). If this Court were to hold that Maine is compelled to fund unapproved private, sectarian schools, this Court would not only be asking Maine to subsidize an education wholly different than the one offered in every other public SAU, but would also be encroaching upon a State's general police power over education. According to Petitioners, a curriculum focused on "training young men and women to serve the Lord" (J.A. 80) serves the primary goal of developing a biblical worldview (J.A. 85). By contrast, public education is aimed at "meeting the learning needs and improving the academic performance of all students." See Me. Rev. Stat. Ann. Tit. 20-A, § 8. To suggest that a State *must* fund a curriculum directly opposite to its educational standards would be antithetical to the institution of public education and most concerningly, deeply violative of a State's interest in fostering conditions necessary for pluralistic democracy such as secularism, tolerance, and diversity in the classroom.

Moreover, this Court has reiterated on numerous occasions that a State must confine itself to secular objectives and that this secular duty applies to public schools. See Roemer v. Bd. of Pub. Works of Maryland, 426 U.S. 736, 747 (1976) (finding the State must confine itself to secular objectives, and neither advance nor impede religious activity); see also People ex rel. McCollum v. Bd. 26 of Ed., 333 U.S. 203, 220 (1948) (tracing the history of the deliberate secularization of public education); Bethel Sch. Dist. No. 403 v. Frazier, 478 U.S. 675, 681 (1986) (noting that the objectives of public education are to "inculcate the habits and manners of civility" which must "include tolerance of divergent . . . religious views, . . . "); Tilton v. Richardson, 403 U.S. 672, 681 (1971) (upholding as constitutional a federal program that provided grants to colleges, including church-affiliated colleges, for the construction of needed facilities, so long as the facilities were not used for religious worship or sectarian instruction.); Hunt v. McNair, 413 U.S. 734, 743 (1973) (upholding a program that barred the use of the funds for any facility used for sectarian instruction or religious worship).

The gradual entrenchment of secularism in public schools was meant to guarantee a truly *public* education system. A neutral, nonsectarian environment ensures tolerance for diverse students of all backgrounds, including those who may be of different faith, gender identity, or sexual orientation. BCS and Temple Academy not only do not adhere to principles of inclusion, tolerance, or diversity but also explicitly proselytize discriminatory beliefs. Among other things, BCS refutes "the teachings of the Islamic religion with the truth of God's Word" and does not allow "openly gay" students to attend its school. J.A. 83, 88. Temple Academy maintains similarly discriminatory policies, stating that "only Christians will be

admitted as students" and that "students from homes with serious differences with the school's biblical basis and/or its doctrines will not be accepted." J.A. 93-94. A Muslim student would not be admitted under this admission policy, nor would any student with other protected identity traits such as being "homosexual" or gender non-conforming. J.A. 94-95.

These exclusionary policies are incongruent with the purpose of public education, which is meant to minimize prejudices and accommodate students and families of all backgrounds. Mandating public dollars toward private schools that discriminate against students on account of religious identity or sexual orientation would directly undermine Maine's stated public policy interest in "prevent[ing] discrimination in . . . access to public accommodations on account of race, color, sex, sexual orientation, physical or mental disability, religion, ancestry or national origin" under the Maine Human Rights Act. Me. Stat. Tit. 5, § 4552. In addition, denying admission to students based on religious status squarely curtails the Free Exercise rights of minority students by excluding those of non-Christian faith like those of Islamic, Catholic, or Jewish faiths.

Ultimately, Maine's demonstrated and legislated state interest in providing a secular public education overrides the Petitioner's misdirected Free Exercise claims. Maine's tuition program aligns with its public policy interests and is designed to ensure that State-funded education, even if at a private school, is roughly equivalent to the education students would receive in public schools. Maine's program also complies with mandatory non-discrimination principles that are

codified in Maine's statutes. Because Maine has a compelling interest in providing nonsectarian education when SAUs maintain their own secondary schools (where the Constitution forbids sectarian instruction), there is no reason this compelling state interest should not extend when SAUs are working with schools that serve as substitutes in districts without secondary schools.

iii. Maine's statute is narrowly tailored to achieving free public education

Given the reality that a mismatch of public options in SAUs is what prompted the creation of a tuition assistance program in the first place, Maine could not more narrowly tailor its program without damaging the fundamental right to free public education. Should this Court rule for the Petitioners, Maine would have to choose between noncompliance with its Human Rights Act or rejecting all private schools, both religious or not religious, from its program. Either result is undesirable. In particular, removing all private schools from eligibility would engender the same conditions that necessitated the enactment of a tuition assistance program in the first place. As it stands, by excluding only those schools that self-identify as pervasively religious and necessarily do not provide the analog of public education, Maine strikes a narrowly tailored balance in compliance with the First Amendment. This Court should uphold the decision below and leave Maine's tuition assistance program undisturbed.

CONCLUSION

The judgment below should be affirmed.

Respectfully submitted.

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YALE LAW SCHOOL
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(203) 432-4992

Counsel for Respondents

Applicant Details

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Middle Initial V.

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State/Territory California

Zip 92620 Country United States

Contact Phone

Number

9492461873

Applicant Education

BA/BS From Chapman University

Date of BA/BS May 2014

JD/LLB From University of Southern California Law School

http://www.nalplawschoolsonline.org/

ndlsdir_search_results.asp?lscd=90513&yr=2009

Date of JD/LLB May 14, 2021
Class Rank I am not ranked

Does the law

school have a Law Yes

Review/Journal?

Law Review/

Journal

No

Moot Court

Experience

Yes

Moot Court Name(s)

Bar Admission

Admission(s) California

Prior Judicial Experience

Judicial

Internships/ Yes

Externships

Post-graduate

Judicial Law Yes

Clerk

Specialized Work Experience

Recommenders

Klerman, Lisa lklerman@law.usc.edu Darmer, Roman rdarmer@jonesday.com 949-553-7581 Lonergan, Rebecca rlonergan@law.usc.edu 213-740-5599

References

- (1) Roman Darmer, rdarmer@jonesday.com, (949) 553-7581;
- (2) Professor Rebecca Lonergan, rlonergan@law.usc.edu, (213) 740-5599;
- (3) Professor Lisa Klerman, lklerman@law.usc.edu, (213) 740-3476 This applicant has certified that all data entered in this profile and any application documents are true and correct.

Danielle V. Luchetta

5 Sharpsburg, Irvine, CA 92620 | (949) 246-1873 | Danielle.Luchetta.2021@lawmail.usc.edu

June 25, 2023

The Honorable Morgan Christen United States Court of Appeals for the Ninth Circuit

Dear Judge Christen:

I write to apply for a judicial clerkship in your chambers for the 2025–2026 term, or any subsequent term. I graduated from the University of Southern California Gould School of Law in 2021, and I am currently a second-year litigation associate at Jones Day. I will be clerking for the Honorable Marilyn L. Huff, U.S. District Court for the Southern District of California, during the 2023–2024 term. Given my experience as a federal judicial extern, my proven tenacity and drive, my passion for legal research and writing, and my unwavering interest in appellate advocacy and constitutional legal theory, I believe I am particularly well suited for the position. Further, I am confident that a clerkship in your chambers would offer invaluable insight into appellate advocacy from the viewpoint of the bench.

Following my first year at USC, I had the opportunity to extern for the Honorable Magistrate Judge Autumn D. Spaeth, U.S. District Court for the Central District of California. During my time in chambers, I drafted minute orders, conducted in-depth research on various habeas corpus matters, and observed multiple hearings, pretrial proceedings, and trials. My externship experience inspired and motivated me to pursue a federal judicial clerkship and confirmed my desire to work in collaboration with a judge to solve complex legal problems and promote justice. Moreover, during my third year at USC, I served as an extern in the Criminal Division of the United States Attorney's Office for the Central District of California. There, I further strengthened my legal research, writing, and advocacy skills, both at the trial level and the appellate level. I continue to refine and polish these skills as a litigation associate at Jones Day. Collectively, these unique experiences have prepared me for a judicial clerkship and will allow me to be an early asset to your chambers.

I also understand what is needed from a clerk. If given the opportunity to work with and learn from you, I promise you the benefit of my boundless energy, my unrelenting work ethic, my ability to manage tasks and people, my organizational skills and keen attention to detail, and my passion for the integrity and honor of the legal profession.

Enclosed you will find my resume, writing sample, law school transcript, and letters of recommendation from Roman Darmer, Professor Rebecca Lonergan, and Professor Lisa Klerman. Please feel free to contact me by phone at (949) 246-1873 or by email at Danielle.Luchetta.2021@lawmail.usc.edu. Thank you for your consideration, and I look forward to hearing from you.

Respectfully,

Danielle V. Luchetta

Danielle, V. Luchetta

Enclosures

Danielle V. Luchetta

5 Sharpsburg, Irvine, CA 92620 | (949) 246-1873 | Danielle.Luchetta.2021@lawmail.usc.edu

EDUCATION

University of Southern California Gould School of Law

Juris Doctor, May 2021

GPA: 3.58

Honors: National Moot Court Team (ABA NAAC): West Coast Regional Finalist, Third Place Best Brief,

Hale Moot Court Honors Program: Finalist, Best Brief for Respondent, Edward & Eleanor

Shattuck Award Recipient

High Honors Grades: Criminal Law (Am.Jur.); Evidence; Constitutional Law Rights; Legal Research, Writing, and

Advocacy II (highest grade in section); Hale Moot Court Brief; Advance Mediation Clinic

Clinics: Appellate Immigration Clinic; Advance Mediation Clinic; Mediation Clinic

Activities: Hale Moot Court Honors Program Board: Administrative Vice Chair; Student Bar

Association: President, 2L President, 1L Representative

Chapman University

Bachelor of Science, *magna cum laude*, Business Administration, May 2014 Bachelor of Arts, *magna cum laude*, Public Relations and Advertising, May 2014

Honors: Argyros School of Business & Economics Scholar (Top 10%); Chancellor's List (eight

semesters); Outstanding Senior of the Year Award Recipient

EXPERIENCE

United States District Court, Southern District of California, San Diego, CA

Incoming Judicial Law Clerk for the Honorable Marilyn L. Huff, September 2023

Jones Day, Irvine, CA

Associate, October 2021 – Present

Summer Associate, May 2020 - July 2020

Research law and draft pleadings, pretrial motions, and memoranda in criminal, civil, and immigration matters. Aid in discovery and trial preparation, including taking and defending depositions and preparing witnesses.

United States Attorney's Office, Central District of California, Los Angeles, California

Criminal Division Extern, September 2020 – April 2021

Aided Assistant United States Attorneys in representing the Government in criminal proceedings. Researched law, wrote memoranda, and drafted briefs for submission to United States Court of Appeals and District Court.

University of Southern California, Los Angeles, CA

Teaching Assistant for Professor Susan R. Estrich, August 2019 - December 2019

Graduate instructor for Professor Estrich's "Law and Society" undergraduate course. Responsibilities included teaching two discussion sections, creating course materials, and grading research papers, midterm exams, and final exams.

United States District Court, Central District of California, Santa Ana, CA

Judicial Extern for the Honorable Magistrate Judge Autumn D. Spaeth, May 2019 – July 2019

Researched and drafted minute orders on various habeas corpus issues including motions for extension of time, requests for appoint of counsel, and discovery requests.

Twentieth Century Fox Film, Los Angeles, CA

Corporate Communications Associate Manager, November 2017 – August 2018; Coordinator, June 2016 – October 2017; Assistant, August 2014 – June 2016

Worked closely with a small awards team in developing the overall strategy and implementation of the domestic "For Your Consideration" award campaigns.

ADDITIONAL INFORMATION

Admitted to the California Bar (State Bar No. 341346). Enjoy golfing, hiking, and cooking.

USC:OASIS:STARS Report 11/15/21, 9:19 PM

On-line Academic Student Information System



ID#: 3197762340



STARS Report

You may directly access the following sections in the StARS report

• Pertinent Data Section

Other courses in your academic account

The Blue text in the StARS report identifies the degree requirements completed.
The Red text in the report highlights the outstanding requirements needed in order to graduate
Place the mouse pointer over the underline codes in the report to view its description.
Descriptions will appear in the status bar at the bottomof your browser window.

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PREPARED: 06/17/21 - 14:53
PROGRAM: 379
                                  CATALOG YEAR: 20183
STARS - DEGREE PROGRESS REPORT
JURIS DOCTORATE - PRE-PROCESSING PROGRAM
FOR INTERNAL USE ONLY
GRADUATE PERTINENT DATA SECTION:
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Term of USC Admission 20183
USC Expected Graduation Date - 14 MAY 2021
                        USC Diploma Information
Name as it will appear on your USC Diploma:
           Danielle Veronica Luchetta
Diploma will be mailed to: 5 Sharpsburg
                               Irvine, CA 92620
CURRENT POST: DEGREE MAJOR UNIT EFFECTIVE TERM
                  JD LAW LAW
    379
                                                20183
PREVIOUS DEGREES:
                 DATE
DEGREE
                             INSTITUTION
               MAY 2014
                            Chapman University
B.S.
                MAY 2014
*** PLEASE BRING THIS REPORT WITH YOU WHEN YOU SEE
YOUR ACADEMIC ADVISOR ***
****** ALL DEGREE REQUIREMENTS HAVE BEEN SATISFIED ********
        A minimum of 88 units is required for graduation.
       20183 LAW 502

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      20183
      LAW 503
      4.0 3.1
      Contracts

      20183
      LAW 507
      4.0 3.1
      Property
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Page 1 of 2

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                       3.0 4.0
                                    Criminal Law
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                                    Legal Profession
20191 LAW 508
20191 LAW 509
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                                    Constitutional Law: Structure
                        4.0 3.2
                                    Torts I
<u>20191</u> LAW 516
                        2.0 3.9
                                    Legal Research, Writing, and
20192 LAW 781
                        4.0 CR
                                   Externship I
Criminal Procedure
20193 LAW 602
                       4.0 3.5
20193 LAW 607
                                    Gifts, Wills, and Trusts
                                   Mediation Clinic I
Hale Moot Court Brief
20193 LAW 630
                        4.0 3.9
20193 LAW 667
                       2.0 4.2
20201 LAW 612
                        3.0 CR
                                    California Civil Procedure
<u>20201</u> LAW 631
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20201 LAW 668
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                                    Hale Moot Court Oral Advocacy
20201 LAW 687
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                                    Immigration Detention and App
20201 LAW 871
20203 LAW 603
                       3.0 CR
                                    First Amendment
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                                    Business Organizations
20203 LAW 669
                        3.0 CR >R Moot Court Supervision
20203 LAW 782
20203 LAW 820
                       4.0 CR
3.0 3.7
                                    Externship II
                                   Pretrial Advocacy
20203 LAW 894
                        1.0 3.9 R Advanced Mediation Clinic
20211 LAW 532
20211 LAW 608
20211 LAW 669
                        3.0 4.0
                                    Constitutional Law: Rights
                        4.0 3.9
                                    Evidence
                        3.0 CR \geqR Moot Court Supervision
                                   Advanced Moot Court Oral Argu
Advanced Moot Court Briefs
20211 LAW 670
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20211 LAW 670
20211 LAW 671
20211 LAW 894
                        2.0 3.8
                        1.0 3.9 N Advanced Mediation Clinic
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OK 2.6 CUMULATIVE GPA REQUIRED OF ALL LAW COURSE WORK COMPLETED AT USC:

EARNED: 3.580 AVE

YOU HAVE MET THE DEPARTMENT APPROVAL REQUIREMENT.

OK

+ 1) DEPARTMENT APPROVAL HAS BEEN RECORDED.

OTHER COURSES IN YOUR ACADEMIC ACCOUNT



This Degree Progress Report has been prepared to assist you in determining your academic progress at the University of Southern California. While every effort has been made to ensure its accuracy, final responsiblity for meeting your graduation requirements resides with you.

If this report does not appear to be accurate, please contact your academic advisor, and bring this report with you. The Office of Academic Records and Registrar, along with your major department, will certify the successful completion of degree requirements.

****************** END OF ANALYSIS *************

Page 1 of 5

Unofficial Undergraduate Advising Transcript

Name: Danielle Luchetta Student ID: 1356581 Print Date: 10/31/2018

SSN: XXX-XX-8475
Birthdate: 05/15/XXXX
Institution Info: Chapman University

Institution ID: 001164

Degrees Awarded

Degree: Bachelor of Science
Confer Date: 05/2014
Degree Honors: Magna Cum Laude

Major: Business Administration with Argyros Scholar Honors

Emphasis: International Business

Emphasis: Marketing

Degree: Bachelor of Arts Confer Date: 05/2014

Degree Honors: Magna Cum Laude
Major: Public Relations/Advertising

Test Scores

Test ID AP AP AP FLP SAT	Test Component AP ENV SCIENCE AP GOVT&POL US AP US HISTORY SPAN Math Math Math Total Total Total Verbal Verbal	Test Date 05/31/2009 05/31/2010 05/31/2010 05/31/2009 07/12/2010 11/01/2008 01/01/2009 11/01/2009 11/01/2009 03/01/2009 11/01/2008 01/01/2009 03/01/2009 11/01/2008 01/01/2009 03/01/2009 03/01/2009 03/01/2009 03/01/2009	Test Score 3.00 4.00 3.00 101.00 620.00 670.00 680.00 1740.00 1760.00 1810.00 490.00
-			
SAT	Verbal	03/01/2009	550.00
SAT	Writing	11/01/2008	630.00
SAT	Writing	01/01/2009	520.00
SAT	Writing	03/01/2009	580.00
SATII	SAT II U.S. History	05/01/2009	600.00

Test Credits

Test Credits Applied Toward Undergraduate Degree Program

			Test Date	Score	Grade
SAT		Math	03/01/2009	680.00	
Transferred to T	erm Fall 2010	as			
WAIVER	98MATH	Math-098 Is Waived		0.000	T
WAIVER	99MATH	Math-099 Is Waived		0.000	T
WAIVER	104MATH	Math 104 Is Waived		0.000	T
			Test Date	Score	Grade
SAT		Verbal	03/01/2009	550.00	
Transferred to T	erm Fall 2010	as			
WAIVER	99ENG	Eng-099 Is Waived		0.000	T
			Test Date	Score	Grade
SAT		Writing	03/01/2009	580.00	
Transferred to T	erm Fall 2010	as			
WAIVER	99ENG	Eng-099 Is Waived		0.000	T
Repeated:		Excluded from statistics			

Page 2 of 5

Unofficial Undergraduate Advising Transcript

Name: Danielle Luchetta Student ID: 1356581 Print Date: 10/31/2018

SAT	Math		Test Date 01/01/2009	Score 670.00	Grade
Transferred to Term Fall 201 WAIVER 98MATH	Math-098 Is Waived			0.000	Т
Repeated: WAIVER 99MATH	Excluded from statistics Math-099 Is Waived Excluded from statistics			0.000	Т
Repeated: WAIVER 104MATH Repeated:	Math 104 Is Waived Excluded from statistics			0.000	Т
SAT	Verbal		Test Date 01/01/2009	Score 570.00	Grade
Transferred to Term Fall 201 WAIVER 99ENG Repeated:	Eng-099 Is Waived Excluded from statistics			0.000	T
SAT Transferred to Term Fall 201	Writing		Test Date 01/01/2009	Score 520.00	Grade
WAIVER 99ENG Repeated:	Eng-099 Is Waived Excluded from statistics			0.000	Т
SAT Transferred to Term Fall 201	Math	CA	Test Date 11/01/2008	Score 620.00	Grade
WAIVER 98MATH Repeated:	Math-098 Is Waived Excluded from statistics			0.000	Т
WAIVER 99MATH Repeated:	Math-099 Is Waived Excluded from statistics			0.000	Т
SAT Transferred to Term Fall 201	Verbal		Test Date 11/01/2008	Score 490.00	Grade
TRAN TR000	Non-Transferable Course		Test Date	0.000 Score	T Grade
SAT Transferred to Term Fall 201	Writing as		11/01/2008	630.00	Grado
WAIVER 99ENG Repeated:	Eng-099 Is Waived Excluded from statistics			0.000	Т
Advanced Placement Transferred to Term Fall 201	AP GOVT&POL US		Test Date 05/31/2010	Score 4.00	Grade
POSC 110	Intro to American Politics		Test Date	3.000 Score	T Grade
Advanced Placement Transferred to Term Fall 201	AP US HISTORY as		05/31/2009	3.00	
TRAN TR000	Non-Transferable Course		Test Date	0.000 Score	T Grade
Advanced Placement Transferred to Term Fall 201			05/31/2009	3.00	_
TRAN TR000	Non-Transferable Course SPAN		Test Date 07/12/2010	0.000 Score 101.00	T Grade
Foreign Language Proficiency Transferred to Term Fall 201			07/12/2010	101.00	
WAIVER 101SPAN	For Prerequisite Use Only			0.000	Т

Beginning of Undergraduate Record

Page 3 of 5

Unofficial Undergraduate Advising Transcript

Name: Danielle Luchetta Student ID: 1356581 Print Date: 10/31/2018

Fillit Date.	10/31/2016							
			2010 Fall					
Course CHEM DANC ENG FFC MGSC SPAN	101 267 103 100 208 101	Description Chemistry of Life Conditioning for Danc:Pilates Writing About Literature Imagining a Sustainable Future Math Analysis for Business Elementary Spanish I		Attempted 3.000 0.500 3.000 3.000 3.000 3.000	Earned 3.000 0.500 3.000 3.000 3.000 3.000	Grade A A- A- A A	Points 12.000 1.850 11.100 12.000 12.000 12.000	
Chapman Te Transfer Terr		3.932 Term Totals Transfer Totals		Attempted 15.500	<u>Earned</u> 15.500 3.000	<u>GPA Units</u> 15.500	<u>Points</u> 60.950	
Chapman Cu Transfer Cun		3.932 Cum Totals Transfer Totals		15.500	15.500 3.000	15.500	60.950	
Academic Sta	anding Effectiv	ve 01/06/2011: Chancellor's List						
		20	011 Interterm					
<u>Course</u> SPAN	102	<u>Description</u> Elementary Spanish II		Attempted 3.000	<u>Earned</u> 3.000	<u>Grade</u> A	<u>Points</u> 12.000	
Chapman Te Transfer Terr		4.000 Term Totals Transfer Totals		Attempted 3.000	<u>Earned</u> 3.000 0.000	GPA Units 3.000	<u>Points</u> 12.000	
Chapman Cu Transfer Cun		3.943 Cum Totals Transfer Totals		18.500	18.500 3.000	18.500	72.950	
			2011 Spring					
Course ACTG BUS ECON MGSC PHIL SPAN	210 217 200 209 104 201	Description Intro to Financial Actg Business Comm: Writing Skills Principles of Microeconomics Intro Business Statistics Introduction to Ethics Intermediate Spanish I		Attempted 3.000 1.000 3.000 3.000 3.000 3.000	Earned 3.000 1.000 3.000 3.000 3.000 3.000	Grade A A A A- A-	Points 12.000 4.000 12.000 11.100 11.100 12.000	
Chapman Te Transfer Terr		3.888 Term Totals Transfer Totals		Attempted 16.000	<u>Earned</u> 16.000 0.000	<u>GPA Units</u> 16.000	<u>Points</u> 62.200	
Chapman Cu Transfer Cun		3.917 Cum Totals Transfer Totals		34.500	34.500 3.000	34.500	135.150	
Academic Sta	anding Effective	ve 06/13/2011: Chancellor's List						
			2011 Fall					
Course ACTG BUS BUS COM ECON MGMT	211 215 218 210 201 316	Description Intro to Managerial Accounting Legal Environment of Business Business Comm: Oral Skills Theories of Persuasion Principles of Macroeconomics Principles of Management		Attempted 3.000 3.000 1.000 3.000 3.000 3.000	Earned 3.000 3.000 1.000 3.000 3.000 3.000	Grade B+ B A A A- A	Points 9.900 9.000 4.000 12.000 11.100 12.000	
Chapman Te Transfer Terr		3.625 Term Totals Transfer Totals		Attempted 16.000	<u>Earned</u> 16.000 0.000	GPA Units 16.000	<u>Points</u> 58.000	
Chapman Cu Transfer Cun		3.825 Cum Totals Transfer Totals		50.500	50.500 3.000	50.500	193.150	
Academic Sta	Academic Standing Effective 01/09/2012: Chancellor's List							

Page 4 of 5

Unofficial Undergraduate Advising Transcript

Name: Danielle Luchetta Student ID: 1356581 Print Date: 10/31/2018

· ····· Buto.	10/01/2010						
			2012 Spring				
<u>Course</u> FIN	317	<u>Description</u> Financial Management		tempted 3.000	<u>Earned</u> 3.000	<u>Grade</u> A-	<u>Points</u> 11.100
FTV	140	Intro to Film Aesthetics		3.000	3.000	A-	11.100
FTV MGSC	231 346	Principles of Public Relations Production & Operations Mgmt		3.000 3.000	3.000 3.000	A- A	11.100 12.000
MKTG	304	Principles of Marketing		3.000	3.000	A-	11.100
			Att	tempted	Earned	GPA Units	Points
Chapman Te Transfer Teri		3.760 Term Totals Transfer Totals		15.000	15.000 0.000	15.000	56.400
Chapman Cu Transfer Cun		3.810 Cum Totals Transfer Totals		65.500	65.500 3.000	65.500	249.550
Academic St	anding Effective	e 06/12/2012: Chancellor's List					
			2012 Fall				
Course		<u>Description</u>		tempted	Earned	<u>Grade</u>	<u>Points</u>
FTV	230	Principles of Advertising		3.000	3.000	Α	12.000
FTV	372	Writing for Public Relations		3.000 3.000	3.000	A-	11.100
MGMT MGSC	470 300	Internat'l Business Management Intro to Information Systems		3.000	3.000 3.000	A- A-	11.100 11.100
MKTG	407	Marketing Research		3.000	3.000	B+	9.900
MKTG	409	Consumer Behavior		3.000	3.000	B+	9.900
			Att	tempted	<u>Earned</u>	GPA Units	<u>Points</u>
Chapman Te Transfer Teri		3.617 Term Totals Transfer Totals		18.000	18.000 0.000	18.000	65.100
Chapman Cu Transfer Cun		3.768 Cum Totals Transfer Totals		83.500	83.500 3.000	83.500	314.650
Academic St	anding Effective	e 01/09/2013: Chancellor's List					
			2013 Interterm				
Course		<u>Description</u>	7	tempted	<u>Earned</u>	<u>Grade</u>	<u>Points</u>
BUS	495	International Real Estate		3.000	3.000	A-	11.100
			<u>Att</u>	<u>tempted</u>	<u>Earned</u>	GPA Units	<u>Points</u>
Chapman Te Transfer Terr		3.700 Term Totals Transfer Totals		3.000	3.000 0.000	3.000	11.100
				00.500		00.500	005 750
Chapman Cu Transfer Cun		3.766 Cum Totals Transfer Totals		86.500	86.500 3.000	86.500	325.750
Transier Cui	II Totals	Transier Totals			3.000		
_		//.	2013 Spring				
<u>Course</u> BUS	475	<u>Description</u> Business Policy:An Inter Pers	Att	tempted 3.000	<u>Earned</u> 3.000	<u>Grade</u> A	<u>Points</u> 12.000
ECON	411	International Economics		3.000	3.000	B+	9.900
FTV	130	Intro to Visual Storytelling		3.000	3.000	A	12.000
FTV	370	Internet Communications		3.000	3.000	A-	11.100
FTV	471	Advanced PR Writing		3.000	3.000	B+	9.900
MKTG	405	Internet Marketing		3.000	3.000	В	9.000
			<u>Att</u>	tempted	<u>Earned</u>	GPA Units	<u>Points</u>
Chapman Te Transfer Teri		3.550 Term Totals Transfer Totals		18.000	18.000 0.000	18.000	63.900
Chapman Cu Transfer Cun		3.729 Cum Totals Transfer Totals		104.500	104.500 3.000	104.500	389.650
			2013 Summer				
Course		Description		tempted	Earned	<u>Grade</u>	<u>Points</u>
BUS	486	Busn Across Cultures: Brazil		3.000	3.000	A	12.000

Page 5 of 5

Unofficial Undergraduate Advising Transcript

Name: Danielle Luchetta Student ID: 1356581 Print Date: 10/31/2018

Chapman Term Totals Transfer Term Totals	4.000 Term Tota Transfer T		Attempted 3.000	<u>Earned</u> 3.000 0.000	GPA Units 3.000	<u>Points</u> 12.000	
Chapman Cum Totals Transfer Cum Totals	3.736 Cum Tota Transfer	_	107.500	107.500 3.000	107.500	401.650	
		2013 Fall					
Course FIN 410 FTV 305 FTV 343 FTV 470 FTV 475 FTV 490	Description International Financial Desktop Publishing Media Relations Pr Case Studies Public Relations Camp Internship		Attempted 3.000 3.000 3.000 3.000 3.000 3.000	Earned 3.000 3.000 3.000 3.000 3.000 3.000	Grade B+ A- A A A- P	Points 9.900 11.100 12.000 12.000 11.100 0.000	
Chapman Term Totals Transfer Term Totals	3.740 Term Tota Transfer T		Attempted 18.000	Earned 18.000 0.000	<u>GPA Units</u> 15.000	<u>Points</u> 56.100	
Chapman Cum Totals Transfer Cum Totals	3.737 Cum Tota Transfer		125.500	125.500 3.000	122.500	457.750	
Academic Standing Effective	01/08/2014: Chancellor's	List					
		2014 Interterm					
Course FTV 361	<u>Description</u> Structure/Function of F	ilm Fes	Attempted 3.000	<u>Earned</u> 3.000	<u>Grade</u> A	<u>Points</u> 12.000	
Chapman Term Totals Transfer Term Totals	4.000 Term Tota Transfer T		Attempted 3.000	<u>Earned</u> 3.000 0.000	GPA Units 3.000	<u>Points</u> 12.000	
Chapman Cum Totals Transfer Cum Totals	3.743 Cum Tota Transfer		128.500	128.500 3.000	125.500	469.750	
		2014 Spring					
Course BUS 216 FTV 262 FTV 419 MKTG 406 MKTG 457	Description Business Ethics Prime Time: The Game Entertainment Marketin International Marketing Marketing Strategy	ng/Promo	Attempted 1.000 3.000 3.000 3.000 3.000	Earned 1.000 3.000 3.000 3.000 3.000	Grade A- A B+ A	Points 3.700 12.000 9.900 12.000 11.100	
Chapman Term Totals Transfer Term Totals	3.746 Term Tota Transfer T		Attempted 13.000	<u>Earned</u> 13.000 0.000	<u>GPA Units</u> 13.000	<u>Points</u> 48.700	
Chapman Cum Totals Transfer Cum Totals	3.743 Cum Tota Transfer		141.500	141.500 3.000	138.500	518.450	
Academic Standing Effective 06/11/2014: Chancellor's List							
Undergraduate Career Total Chapman Cum Totals Transfer Cum Totals	s 3.743 Cum Tota Transfer	_	141.500	141.500 3.000	138.500	518.450	

End of Undergraduate

June 26, 2023

The Honorable Morgan Christen Old Federal Building 605 West Fourth Avenue, Suite 252 Anchorage, AK 99501-2248

Dear Judge Christen:

I am writing to provide an enthusiastic recommendation for Danielle Luchetta, who is applying for a clerkship position in your chambers. Danielle is truly extraordinary. I was fortunate enough to have her as my student for two years in the Mediation Clinic class that I teach at the Law School. After being selected for admission into the highly competitive Clinic at the inception of her 2L year, she went on to excel in every aspect of her work, earning a very high grade in the class and uniformly impressing all the clients and colleagues that she worked with. The Clinic is a "working" class that operates essentially as a mediation firm. For that reason, I am uniquely positioned to evaluate students as if they were attorney colleagues.

As part of their work in the Clinic, the students mediate dozens of cases that are pending in the Los Angeles Superior Court or in agencies such as the EEOC and California's Fair Employment and Housing Department. Successful student mediators – such as Danielle -- are eligible to matriculate to the Advanced Mediation Clinic in their third year of law school, where they officiate over increasingly sophisticated mediations, often where the parties are represented by counsel.

These disputes invariably involve high emotions, and are conducted under time pressure. Thus, in order to mediate these cases successfully, the mediator must demonstrate an ability to listen empathically, elicit information, generate constructive dialogue between the parties, analyze the case, discuss legal procedures in a way that can be easily understood by persons unfamiliar with the law, assist them in finding solutions to their problems, and draft a settlement agreement – all within a time frame typically limited to just a few hours and under conditions that are frequently stressful.

Danielle excelled in all aspects of her work. When we had a particularly challenging case, I was confident that by assigning Danielle to handle it, the case would be handled supremely competently, with complete autonomy. During the pandemic period, Danielle pivoted admirably to online mediations, and acted as a valuable mentor, helping to train the junior mediators by having them co-mediate with her.

As a former federal law clerk myself three decades ago, I know how important it is to have someone in the role who is conscientious and committed. No matter what she is taking on, Danielle can always be counted upon to be punctual, prepared, and diligent. Equally important is her talent as a writer, which is critical for a law clerk. Danielle's writing garnered multiple awards during her time at the law school in the Moot Court Honors Program. She has already proven herself committed to clerking by accepting a clerkship with Judge Marilyn Huff this coming fall. Her time there will serve to augment and refine her skills, preparing her for the exciting appellate work that she hopes to perform for you.

Finally, Danielle is a delightful person. She is congenial and easy-going, to the point where her good-natured attitude is infectious to everyone around her. Her peer classmates and junior mediators loved working with her. She was a leader at the law school, serving in officer positions including President of the Student Bar Association. She exudes a good-humored and friendly confidence without even the slightest hint of arrogance, as well as a maturity that I usually only see in law students who have had significant and lengthy experiences working in the professional world following their undergraduate studies. I am confident that she would get along well with you, with her fellow law clerks, and with the court staff at all levels.

If you have any questions about Danielle, please do not hesitate to contact me. Please feel free to call me on my cell phone – (310) 386-9612 – or my home phone – (310) 544-6773.

Sincerely,

Lisa Klerman

Clinical Professor of Law Director of the Mediation Clinic USC Gould School of Law

Lisa Klerman - Iklerman@law.usc.edu

June 26, 2023

The Honorable Morgan Christen Old Federal Building 605 West Fourth Avenue, Suite 252 Anchorage, AK 99501-2248

Dear Judge Christen:

I am writing to recommend Danielle Luchetta for a clerkship in your chambers. I had the pleasure of having Danielle as a student in several of my classes during her second and third years of law school. First, during her second year, Danielle was a participant in the Hale Moot Court Honors Program, which I supervise. The program is an invitation-only, year-long honors class and moot court competition. Students are invited to join the program based on their writing and oral advocacy skills. Danielle did an outstanding job in the class and the competition, winning a best brief award for her appellate brief. Then, during her third year of law school, I worked closely with Danielle while she was the Administrative Vice Chair of the Hale Moot Court Executive Board. I also invited her to be a member of our National Moot Court Team. Once again, she excelled in both positions. She was an outstanding Vice Chair, helping to supervise and administer the competition. Additionally, as a member of the National Team, she entered the ABA National Appellate Advocacy competition and was a regional finalist. Based on her performance in all of those programs, competitions, and classes, I know that Danielle is an excellent writer and an excellent oral advocate.

On a more personal level, one of the things that I like the most about Danielle is her eagerness to learn and her willingness to put in the hard work that it takes to excel at everything she does. She not only attended all of my required classes sessions but also took the time to come to my office hours to individually discuss her work. During our conversations, I found her to be an excellent student; she is hard-working, intelligent, and organized. When I gave her constructive criticism, she paid close attention and immediately incorporated it into her work. I also loved how supportive she was of her fellow students, volunteering her time to do practice oral arguments with her moot court teammates. In short, she was an excellent student and a genuinely nice person.

I have no doubt that Danielle has continued to improve her research, writing and advocacy skills since her graduation while working at Jones Day. I also know that she plans to clerk for the Honorable Marilyn Huff in the Southern District of California before hopefully finding an appellate clerkship. I am confident that she will be well-prepared to be an outstanding appellate law clerk after all of that training and experience.

Before coming to USC as a fulltime faculty member in 2007, I was an Assistant United States Attorney in the Central District of California for seventeen years. During that time, I had frequent contact with various circuit judges and their clerks, and I became familiar with the work performed by the law clerks. I am certain that Danielle will make an excellent clerk. She knows how to thoroughly research a legal issue and then write a clear, concise, and complete analysis. She can also be trusted to think independently and help spot potential issues. She is also a sweet, polite person who is well-liked by everyone around her.

In short, I think she will make an absolutely outstanding clerk. If I was a judge, I would be excited to hire her. Please feel free to contact me if you have any questions or concerns.

Sincerely,

REBECCA S. LONERGAN

Danielle V. Luchetta

5 Sharpsburg, Irvine, CA 92620 | (949) 246-1873 | Danielle.Luchetta.2021@lawmail.usc.edu

WRITING SAMPLE

The following writing sample is an excerpt from my Hale Moot Court Honors Program appellate brief. The competition case involved two constitutional criminal issues, both concerning the Fifth Amendment right against self-incrimination. My brief focused solely on the first issue—whether the prosecution's use of a defendant's pre-arrest, pre-Miranda silence as substantive evidence of guilt is a violation of the Fifth Amendment. Writing for the defendant-respondent, I argue in this excerpt that the prosecution's use of the defendant's pre-arrest, pre-Miranda silence is a Fifth Amendment violation for the following two reasons: (1) the silence occurred during a custodial interrogation; and (2) even assuming the defendant was not subjected to a custodial interrogation, the use of her silence is still a violation because the defendant expressly invoked her Fifth Amendment rights. The defendant's pre-arrest, pre-Miranda silence occurred in response to an officer's insulting comments, implying that the defendant was guilty of unlawful possession and dissemination of child pornography. This interaction occurred while the defendant was detained by the officer during the execution of a search warrant.

I received the Anthony and Susan Taylor Written Advocacy Award for Best Brief for Respondent in the competition. I have permission from the Hale Moot Court Program to use this brief as a writing sample.

OPINIONS BELOW

In response to Plaintiff-Petitioner United States' allegations, Defendant-Respondent Lana Smith filed a motion to suppress evidence, including: (1) any and all testimony concerning her pre-arrest silence as substantive evidence of guilt; and (2) any and all evidence found on the encrypted drive of the laptop computer that was seized from her home. R. at 43. Ms. Smith argued that use of the evidence would violate her fundamental Fifth Amendment rights. R. at 38.

The United States District Court for the District of Gould denied the motion to suppress evidence, leading Ms. Smith to enter a conditional guilty plea. R. at 57, 64. The district court held that the Government was allowed to use Ms. Smith's pre-arrest silence as substantive evidence of guilt as well as any and all evidence found on the encrypted drive. R. at 56–57.

In a well-reasoned opinion, the Court of Appeals for the Twelfth Circuit reversed on both issues. R. at 79. The court first held that Ms. Smith's rights were violated when the district court allowed her pre-arrest silence to be used as substantive evidence of guilt. *Id.* The court reasoned that a defendant's Fifth Amendment rights attach far before any adversarial proceedings begin, and no special combination of words is required to invoke them. *Id.* Further, the court held that Ms. Smith's act of producing the password to the laptop was a protected testimonial statement that did not fall within the foregone conclusion doctrine. *Id.* Thus, the Government's use of evidence found on the encrypted drive violated Ms. Smith's Fifth Amendment right against self-incrimination. R. at 59.

¹ Following the Government's allegations, a grand jury issued an indictment on April 26, 2018, charging Ms. Smith with fifty-two counts of producing sexually explicit visual depictions of a minor, in violation of 18 U.S.C. § 2251(b). R. at 63.

² This brief focuses solely on the first issue—the use of Ms. Smith's pre-arrest silence as substantive evidence of guilt.

Because the evidence obtained from both issues was essential to the case and the district court's denial of the suppression motion led to Ms. Smith's conditional guilty plea, the court correctly held that the district court's error was not harmless. R. at 79. The Twelfth Circuit vacated the decision and remanded the case to allow Ms. Smith the opportunity to withdraw her guilty plea. *Id.* The Government petitioned, and this Court granted writ of certiorari for both issues. R. at 80.

STATEMENT OF FACTS

On January 30, 2018, at approximately 9:30 a.m., Federal Bureau of Investigation (FBI) Special Agent (SA) Elizabeth Avunjian and Gould City Police Department (GCPD) Officer Joshua Stillman barged into Defendant-Respondent Lana Smith's home, announcing that they had a warrant to search for child pornography.³ R. at 13. Ms. Smith was detained and berated during the extensive two-hour-long search. R. at 13, 16–17. Plaintiff-Petitioner United States now intends to use Ms. Smith's responsive pre-arrest silence against her. R. at 47.

As a single mother, Ms. Smith works hard to provide for her five-year-old daughter, Lily.

R. at 2, 4. In addition to ensuring Lily is well fed and their home is well kept, Ms. Smith works at a small boutique store. R. at 4–5. Unable to afford childcare, Ms. Smith drops Lily off at school each morning and picks her up once she is off work. R. at 4–6.

On the morning of the search warrant execution, shortly after Ms. Smith dropped Lily off at school, SA Avunjian and Officer Stillman appeared unexpectedly at Ms. Smith's door. R. at 13. Both officers were visibly armed. R. at 20, 34. Upon entering her home, Officer Stillman ordered Ms. Smith to stay in the living room while the warrant was being executed. R. at 16–17.

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³ On January 19, 2018, SA Avunjian received information that Ms. Smith might be taking inappropriate photographs of her child. R. at 1–2. SA Avunjian initiated an investigation, which led to the execution of the search warrant on January 30, 2018. *Id.*

Officer Stillman also forced Ms. Smith to sit on a couch and ordered her not to move. R. at 13. He then proceeded to stand guard over her, blocking all access to the front door. *Id.* Officer Stillman "never said anything to [Ms. Smith] about whether she could leave or not" and blocked the entry because he "didn't want her to be able to bolt out the door." R. at 34–35. SA Avunjian and Officer Stillman later admitted they had no reason to believe that Ms. Smith was a threat. R. at 33.

At one point, Ms. Smith attempted to get up from her couch. R. at 13. Officer Stillman ordered her not to move and demanded that she sit back down. *Id.* Ms. Smith became "very upset," and repeatedly objected to the searched. *Id.* Multiple times, Ms. Smith told Officer Stillman that she had not done anything wrong and that they would not find anything illegal. *Id.*

Approximately ten minutes into the search, SA Avunjian showed Officer Stillman a photograph of Lily, who was not wearing any clothes because she was in the shower. R. at 17. Officer Stillman began to berate Ms. Smith, stating, "That's sick" and calling her a "terrible mother." R. at 13. Ms. Smith's only reaction was to "look away without responding." R. at 14. However, Officer Stillman did not stop there. *Id.* A few seconds later, Officer Stillman questioned her and asked, "How do you live with yourself after doing that?" *Id.* At that point, Ms. Smith looked up and said, "Leave me alone," and then looked back down. *Id.* Officer Stillman expected Ms. Smith to deny that she did anything wrong if she was innocent. R. at 37. The conversation ended there. R. at 14.

Upon conclusion of the search, SA Avunjian seized an encrypted laptop computer and formally told Ms. Smith that she was under arrest for child pornography. R. at 22. Officer Stillman then handcuffed Ms. Smith and for the first time, read her *Miranda* rights to her. R. at 18. SA Avunjian took Ms. Smith down to a law enforcement vehicle to transport her to the

local, federal detention center for booking. R. at 22. While driving, SA Avunjian demanded that Ms. Smith give her the password to the laptop computer. R. at 22, 46. Ms. Smith complied and gave SA Avunjian the password. *Id*.

ARGUMENT

I. THE TWELFTH CIRCUIT PROPERLY HELD THAT THE GOVERNMENT'S USE OF MS. SMITH'S PRE-ARREST, PRE-MIRANDA SILENCE AS SUBSTANTIVE EVIDENCE OF GUILT IS A FIFTH AMENDMENT VIOLATION BECAUSE HER PRE-ARREST, PRE-MIRANDA SILENCE OCCURRED DURING A CUSTODIAL INTERROGATION.

The Fifth Amendment provides that "[n]o person . . . shall be compelled in any criminal case to be a witness against himself." U.S. CONST. amend. V. Implicit in this fundamental guarantee is "the right of a person to remain silent unless [she] chooses to speak in the unfettered exercise of [her] own will, and to suffer *no penalty* . . . for such silence." *Malloy v. Hogan*, 378 U.S. 1, 8 (1964) (emphasis added).

The right against self-incrimination was added to the "Constitution in the conviction that too high a price may be paid even for the unhampered enforcement of the criminal law and that, in its attainment, other social objects of free society should not be sacrificed." *Hoffman v. United States*, 341 U.S. 479, 486 (1951). This privilege protects the defendant from being the "unwilling instrument" of her own condemnation as well as ensures that the government is properly "put on notice." *Salinas v. Texas*, 570 U.S. 178, 183 (2013); *Mitchell v. United States*, 526 U.S. 314, 329 (1999).

Although Fifth Amendment protection initially attached in the courtroom setting, Miranda v. Arizona, 384 U.S. 436, 478 (1966) expanded this core right to cover custodial interrogation settings. Custodial interrogation is the "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of [her] freedom of action in any significant way." *Id.* at 444 (emphasis added). In *Miranda*, the Court emphasized the continued importance of protecting the defendant from coercive police practices historically used in custodial interrogations. *See id.* at 448–49 (". . .this Court has recognized that coercion can be mental as well as physical, and that the blood of the accused is not the only hallmark of an unconstitutional inquisition."). Thus, the Court held that certain procedural safeguards *must be* employed before a custodial interrogation takes place in order to properly protect the defendant against self-incrimination. 384 U.S. at 478–79.

Those safeguards, commonly known as *Miranda* rights, require the defendant be informed that, among other things, she "has the right to remain silent" and that anything said can be used against her in a court of law. *Id.* at 479. If the government fails to inform the defendant of her *Miranda* rights before a custodial interrogation, "no evidence obtained as a result of interrogation can be used against" her at trial. *Id.*

In reviewing a district court's denial of a suppression motion and whether a defendant is constitutionally entitled to *Miranda* warnings, de novo review is appropriate, but the underlying factual findings are reviewed for clear error. *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, 948 (1995); *United States v. Crawford*, 372 F.3d 1048, 1053 (9th Cir. 2004).

A. Ms. Smith Was Deprived of Her Freedom of Movement to a Degree Analogous to a Formal Arrest and Thus, Was in Custody.

An individual is "in custody" whenever there is a formal arrest or restraint on freedom of movement to a degree analogous to a formal arrest. *California v. Beheler*, 463 U.S. 1121, 1125 (1983); *see United States v. Faux*, 828 F.3d 130, 135 (2d Cir. 2016) ("An individual who understands that her detention is 'not likely to be . . . brief' and feels that she is 'completely at the mercy of police' could reasonably deem her situation comparable to a formal arrest." (citations omitted)).

1. Given the totality of circumstances, Ms. Smith's freedom of movement was restrained to a degree analogous to a formal arrest.

To determine whether an individual is in custody absent a formal arrest, the Court must first consider the "totality of the circumstances" that confronted the defendant at the time of questioning and inquire whether a reasonable person would have thought she was free to leave the police encounter at issue. *Thompson v. Keohane*, 516 U.S. 99, 112–13 (1995).

Circumstances relevant to establishing custody during a search warrant execution include: (1) the location of the questioning (*e.g.*, at the suspect's home, in public, or in a police station); (2) its duration; (3) whether the suspect volunteered to be interviewed; (4) whether the officers used restraints; (5) whether weapons were present; and (6) whether officers told the suspect she was free to leave or under suspicion. *Faux*, 828 F.3d at 135. In *Orozco v. Texas*, 394 U.S. 324, 325–27 (1969), the Court held that the defendant was in custody when four officers entered his bedroom, questioned him without providing warnings, and behaved as though he was "not free to leave," even though they did not physically restrain the suspect. Additionally, in *United States v. Richardson*, 36 F. Supp. 3d 120, 129–31 (D.D.C. 2014), the court held that the defendant was in custody when police officers forcibly entered her premise with visible weapons, guarded the defendant in her living room, and failed to inform her she was neither under arrest nor free to leave. Furthermore, in *United States v. Peterson*, 506 F. Supp. 2d 21, 24 (D.D.C. 2007), the court held that the defendant was in custody because, among other factors, he was forced to remain seated in the living room, several officers were present throughout the duration of the search, and the officers' weapons were clearly visible.

Here, Ms. Smith's freedom of movement was restrained to a degree analogous to a formal arrest when considering the totality of the circumstances surrounding the search. Similar to *Richardson*, in which the police officers failed to inform the defendant she was neither under

arrest nor free to leave, here, Officer Stillman "never said anything to [Ms. Smith] about whether she could leave or not." Additionally, like Peterson, in which the court held the defendant was in custody when an armed police officer forced him to remain seated in the living room, here, Officer Stillman, also visibly armed, forced Ms. Smith to remain in her living room and proceeded to stand guard over her for the entirety of the two-hour-long search, blocking all access to the front door. At one point, Ms. Smith even attempted to get up from the couch however, Officer Stillman demanded that she sit back down. Thus, Officer Stillman not only restricted Ms. Smith's freedom of movement to her living room, he restricted her movement to only a couch in her living room. The only reason an officer might require an individual to stay in one location is to ensure officer safety, but that reason was not at play here. Not only did SA Avunjian generally limit her search to the back bedroom, SA Avunjian and Officer Stillman also both admitted they had no reason to believe that Ms. Smith was a threat. Thus, like Orozco, in which the court held the defendant was in custody because the police behaved as though he was "not free to leave," even though they did not physically restrain the suspect, here, Officer Stillman behaved as though Ms. Smith was not free to leave even though he never physically restrained Ms. Smith. Taking all of these considerations into account, no reasonable person in a similar situation would have felt free to get up from the couch and leave given Officer Stillman's dominant presence in the room.

Accordingly, Ms. Smith's freedom of movement was restrained to a degree analogous to a formal arrest when considering the totality of the circumstances surrounding the search.

2. <u>Ms. Smith was subjected to an equivalent form of inherently coercive Miranda pressures.</u>

In order for an individual to be properly classified as "in custody," the Court must also determine whether the "relevant environment presents the same inherently coercive pressures as

the type of station house questioning at issue in *Miranda*." *Howes v. Fields*, 565 U.S. 499, 509 (2012) (reasoning that custody requires more coercive pressure than the temporary and nonthreatening detention involved in a traffic stop).

Furthermore, the execution of a search warrant tends to be "inherently police dominated." See J.D.B. v. North Carolina, 564 U.S. 261, 268 (2011); see also Oregon v. Mathiason, 429 U.S. 492, 495 (1977) (acknowledging that any police questioning of an individual suspected of a crime will have "coercive aspects to it"). In modern practice, coercive police pressure is often psychologically rather than physically oriented. Miranda v. Arizona, 384 U.S. 436, 448 (1966). In United States v. Craighead, 539 F.3d 1073, 1089 (9th Cir. 2008), the court held the defendant was in custody for the purpose of Miranda because his home had become a police-dominated atmosphere after being escorted to a storage room, forced to sit in one place, guarded by a visibly armed officer, and reasonably believed that there "was simply nowhere for him to go."

Conversely, in United States v. Mitchell, 966 F.2d 92, 98–99 (2d Cir. 1992), the court held the defendant was not subjected to coercive pressures because the in-home interview was volunteered and there was no police action that could reasonably be taken as "intimidating."

Here, Ms. Smith was subjected to the same inherently coercive pressure as the type of station house questioning in *Miranda*. Similar to *Craighead*, in which the court held the defendant was in custody because his home had become a police-dominated atmosphere, here, Ms. Smith's home had become a police-dominated atmosphere during the search because both officers were visibly armed, Ms. Smith was outnumbered, her movement was restricted to only a couch, and her access to the front door was blocked. Accordingly, there was simply nowhere for Ms. Smith to go. Thus, unlike *Mitchell*, in which the police action was not intimidating, here, Officer Stillman and SA Avunjian's action could reasonably be interpreted as intimidating.

Lastly, unlike *Mitchell*, in which the court held the defendant was not subjected to coercive pressures because the defendant cooperated throughout the interview, here, Ms. Smith neither volunteered to be interviewed by Officer Stillman nor answered his pointed question. As this Court previously held, executions of search warrants tend to be inherently police dominated and the case at hand appears to be no different. This environment is a far cry from a normal traffic stop mentioned by the *Miranda* Court. Accordingly, Ms. Smith was subjected to a similar form of inherently coercive pressure as seen in *Miranda*.

In sum, Ms. Smith was in custody because her freedom of movement was restricted to her couch, she was never told she was not under arrest or free to leave, both officers were visibly armed, and Officer Stillman blocked all access to the door.

B. Ms. Smith Was Subjected to the Functional Equivalent of Express Questioning and Thus, Was Interrogated.

An individual is "interrogated" when he or she is subjected to either express police questioning or "its functional equivalent." *R.I. v. Innis*, 446 U.S. 291, 300–01 (1980). Any "words or actions" on the part of police that they "*should have known* were reasonably likely to elicit an incriminating response" from the suspect, constitute the functional equivalent of express questioning. *Id.* at 301–02 (emphasis added).

Moreover, interrogation "must reflect a measure of compulsion" above that inherent in custody itself. *Id.* at 299–300 (explaining that the use of psychological ploys, such as to suggest the guilt of the subject or to cast blame on the victim amount to interrogation). In *United States v. Soto*, 953 F.2d 263, 264–65 (6th Cir. 1992), the court held that a police officer's rhetorical question amounted to the functional equivalent of express questioning. In response to finding drugs and a photograph of the defendant's family, a police officer asked the defendant, "What are you doing with crap like that when you have these two waiting for you at home?" to which

the defendant did not respond. *Id.* The court reasoned that the officer should have known this would likely elicit an incriminating response. *Id.* Furthermore, in *United States v. Familetti*, 878 F.3d 53, 59 (2d Cir. 2017), the court held that the agents' request for help with an investigation constituted interrogation because it "left no doubt" that the defendant was a suspect, and his response would "likely confirm as much."

Here, Ms. Smith was subjected to the functional equivalent of express questioning and thus, was interrogated by Officer Stillman. Similar to *Soto*, in which the police officer asked the defendant, "What are you doing with crap like that when you have these two waiting for you at home?" after finding drugs and seeing a photograph of the defendant's family, here, Officer Stillman, asked Ms. Smith, "How do you live with yourself after doing that?" after seeing a photograph of Ms. Smith's child. Like the *Soto* court, which held that the police officer should have known his rhetorical question would likely elicit an incriminating response and thus, was an interrogation, here, Officer Stillman should have known his question would likely elicit an incriminating response from Ms. Smith. Furthermore, like *Familetti*, in which the court held that the agents' request for help with an investigation constituted an interrogation because it "left no doubt" that the defendant was a suspect, here, Officer Stillman's question and insulting comments, left no doubt that Ms. Smith was a suspect in their investigation.

In sum, Officer Stillman's conduct was the functional equivalent of express questioning and thus, an interrogation because he should have known his question would likely elicit an incriminating response from Ms. Smith.

C. Because the Government Failed to Mirandize Ms. Smith Before Subjecting Her to a Custodial Interrogation, the Use of Her Pre-Arrest, Pre-Miranda Silence is a Fifth Amendment Violation.

When a defendant is subjected to a custodial interrogation, the Fifth Amendment requires the individual be informed that, among other things, she "has the right to remain silent." *Miranda v. Arizona*, 384 U.S. 436, 479 (1966). This procedural safeguard *must be* employed before a custodial interrogation takes place in order to properly protect the defendant against compulsory self-incrimination. *Id.* at 478–79. If the government fails to inform the defendant of her *Miranda* rights before a custodial interrogation, "no evidence obtained as a result of interrogation can be used against" her at trial. *Id.*

Ms. Smith was subjected to a custodial interrogation. However, she was not read her *Miranda* rights until *after* the search. As such, no evidence obtained as a result of the custodial interrogation can be used against Ms. Smith, including her pre-arrest, pre-*Miranda* silence. Thus, the Government's use of Ms. Smith's pre-arrest, pre-*Miranda* silence as substantive evidence of guilt is a grave Fifth Amendment violation.

Accordingly, this Court must rectify this Fifth Amendment violation and affirm the Twelfth Circuit's decision in holding the district court erred in denying the suppression motion.

II. EVEN ASSUMING MS. SMITH WAS NOT SUBJECTED TO A CUSTODIAL INTERROGATION, THE TWELFTH CIRCUIT PROPERLY HELD THAT THE GOVERNMENT'S USE OF HER PRE-ARREST, PRE-MIRANDA SILENCE AS SUBSTANTIVE EVIDENCE OF GUILT IS A FIFTH AMENDMENT VIOLATION BECAUSE MS. SMITH EXPRESSLY INVOKED HER FIFTH AMENDMENT RIGHTS.

To be afforded Fifth Amendment protection, an individual is required to expressly and unambiguously invoke the privilege. *See Salinas v. Texas*, 570 U.S. 178, 181 (2013) (plurality opinion). However, invocation "does not require any special combination of words." *Quinn v. United States*, 349 U.S. 155, 162 (1955). Stated differently, "no magic language or ritualistic

formula" is required. *Id.*; *see Salinas*, 570 U.S. at 183 (explaining that a defendant must only put an officer "on notice" that she intends to rely on the privilege).

A. Consistent with the Underlying Principles of the Fifth Amendment, this Court Must Adopt a Liberal Construction of the Express Invocation Requirement and Hold that Ms. Smith Expressly Invoked Her Rights.

The Fifth Amendment is effectively invoked by "any language which the court should reasonably be expected to understand as an attempt to claim the privilege." *Coppola v. Powell*, 878 F.2d 1562, 1565 (1st Cir. 1989) (citations omitted).

To determine whether the Fifth Amendment has been invoked, one must consider the "entire context in which the claimant spoke." *United States v. Goodwin*, 470 F.2d 893, 902 (5th Cir. 1972), *cert. denied*, 411 U.S. 969 (1973). In *Tice v. Johnson*, 647 F.3d 87, 107–08 (4th Cir. 2011), the court held that the defendant's statement that "he decide[d] not to say any more," was an unambiguous invocation. The court reasoned that a reasonable officer under the circumstances would have understood this to mean the defendant no longer wished to answer questions. *Id.* Additionally, in *United States v. Abdallah*, 911 F.3d 201, 211–12 (4th Cir. 2018), the court held that the statement "[he] wasn't going to say anything at all" could not be construed as "anything but an unambiguous request to remain silent."

Moreover, invocation of the Fifth Amendment right "*must* be given a liberal construction" in favor of the right it was intended to protect. *Coppola*, 878 F.2d at 1565 (emphasis added) (explaining that the right was added to the Constitution to protect defendants from the "unhampered enforcement of criminal law"). Accordingly, even the "most feeble attempt" to claim the privilege must be recognized. *Goodwin*, 470 F.2d at 902.

This Court must adopt a liberal construction of the express invocation requirement because it is consistent with the underlying principles of the Fifth Amendment. The Fifth Amendment was regarded by the framers, and continues to be regarded today, "as a privilege of great value, a protection to the innocent through a shelter to the guilty and a safeguard against heedless, unfounded or tyrannical prosecutions." *Quinn*, 349 U.S. at 162 (citations omitted).

As such, the Fifth Amendment allows citizens to "remain silent when asked a question requiring an incriminatory answer." *Kastigar v. United States*, 406 U.S. 411, 461 (1972). To hold otherwise, would put citizens in an "impossible predicament." *Salinas*, 570 U.S. at 195 (Breyer, Ginsburg, Sotomayor & Kagan, JJ., dissenting) (explaining that in this instance, the individual must either answer the question or remain silent, both of which "can compel an individual to act as a witness against himself—very much what the Fifth Amendment forbids"). Thus, without a liberal construction, this predicament continues to exist when an individual invokes "explicitly or implicitly, through words, through deeds, or through references to surrounding circumstances." *Id.* Accordingly, a liberal construction of invocation is *not only* consistent with the Fifth Amendment principles, but also *necessary* in protecting citizens against unhampered enforcement of criminal law.

Here, when considering the entire context of the search, Ms. Smith expressly invoked her Fifth Amendment right to remain silent. Similar to *Tice*, in which the court held the defendant unambiguously invoked his right by stating "he decide[d] not to say any more" because a reasonable officer would have understood this to mean the defendant no longer wished to answer questions, here, a reasonable officer would understand Ms. Smith's statement "leave me alone" to mean she had no desire to answer Officer Stillman's questions. Furthermore, when looking at the entire context of Ms. Smith and Officer Stillman's interaction, Ms. Smith continued to remain silent following her invocation. On multiple occasions, Ms. Smith also looked away from Officer Stillman, never once responding to his insulting comments. Moreover, by asking

Ms. Smith, "How do you live with yourself after doing that?" Officer Stillman put Ms. Smith in an impossible predicament much like the one discussed by the dissent in *Salinas*. This predicament required Ms. Smith to either answer Officer Stillman's question or remain silent, both of which would compel her to act as a witness against herself. Instead, Ms. Smith chose to expressly invoke her Fifth Amendment rights by stating "leave me alone." Without this vital Fifth Amendment protection, Ms. Smith is defenseless against the unhampered enforcement of criminal law—very much what the Fifth Amendment forbids. Accordingly, Ms. Smith is the very interest the Fifth Amendment was intended to protect and thus, her invocation must be given a liberal construction.

In sum, after considering the entire context of the interaction between Ms. Smith and Officer Stillman, Ms. Smith expressly invoked her right to remain silent.

B. The Government's Use of Ms. Smith's Post-Invocation, Pre-Arrest Silence is a Grave Violation of Her Fundamental Fifth Amendment Rights.

Both the district court as well as the Twelfth Circuit relied heavily on *Salinas* when forming its opinion to the case at hand. However, only the Twelfth Circuit properly understood the narrow reach of *Salinas*. In *Salinas*, the Supreme Court granted certiorari to decide whether a defendant's failure to answer questions, pre-arrest, pre-*Miranda*, can be used as substantive evidence of guilt. 570 U.S. at 191. However, the plurality found it "unnecessary to reach that question" and rather, narrowly held the defendant's Fifth Amendment claim failed because he failed to expressly invoke the privilege. *Id.* at 183, 191. In *Salinas*, when the suspect was asked an incriminating question, he remained silent, "looked down at the floor, shuffled his feet, bit his bottom lip, clenched his hands in his lap, and began to tighten up." *Id.* The plurality opinion held that by remaining silent, the defendant failed to invoke his Fifth Amendment rights, and thus, the evidence was admissible in trial. *Id.* at 191. Given that *Salinas* is a plurality opinion,

only this holding is binding on the lower courts. *See Marks v. United States*, 430 U.S. 188, 193 (1977). Thus, when a defendant fails to invoke her Fifth Amendment rights, her silence will not be protected. 570 U.S. at 191.

However, as stated above, Ms. Smith did in fact expressly invoke her Fifth Amendment rights by asking Officer Stillman to leave her alone and when considering the entire context of the search warrant execution. Accordingly, the holding in *Salinas* does not reconcile the case at hand.

Left unanswered remains the broader question of whether the Fifth Amendment privilege prohibits the government from using a defendant's post-invocation, pre-arrest silence as substantive evidence of guilt. *Id.* at 191. This Court must clarify this question and finally address the divide among the circuits.

This answer lies with the intent of the framers. The underlying principle of the Fifth Amendment is to "protect a defendant from being the unwilling instrument" of her own condemnation. *Mitchell v. United States*, 526 U.S. 314, 329 (1999). Therefore, if a defendant expressly invokes her right, her pre-arrest silence should not be the unwilling instrument of her own condemnation. Allowing the government to use a defendant's post-invocation, pre-arrest silence as substantive evidence of guilt "ignores the teaching that the protection of the Fifth Amendment is not limited to those in custody or charged with a crime." *Coppola v. Powell*, 878 F.2d 1562, 1566 (1st Cir. 1989). Furthermore, this would go against the underlying principle of the Fifth Amendment. When drafting the Fifth Amendment, the framers "made a judgment . . . that it [was] better for an occasional crime to go unpunished than that the [government] should be free to build up a criminal case, in whole part or in part, with the assistance of enforced disclosures by the accused." *Id.*

Accordingly, consistent with the underlying principles of the Fifth Amendment, the government *must* be prohibited from using a defendant's post-invocation, pre-arrest silence as substantive evidence of guilt. *See Combs v. Coyle*, 205 F.3d 269 (6th Cir. 2000); *United States v. Burson*, 952 F.2d 1196 (10th Cir. 1991); *Coppola v. Powell*, 878 F.2d 1562 (1st Cir. 1989); *United States ex rel. Savory v. Lane*, 832 F.2d 1011 (7th Cir. 1987). *But see United States v. Rivera*, 944 F.2d 1563 (11th Cir. 1996); *United States v. Zanabria*, 74 F.3d 590 (5th Cir. 1996); *United States v. Oplinger*, 150 F.3d 1061 (9th Cir. 1988); *United States v. York*, 830 F.2d 885 (8th Cir. 1987).

This Court, consistent with the logic of the Twelfth Circuit, must follow the framer's intent and continue to protect the defendant's interest. Accordingly, the Government's use of Ms. Smith's pre-arrest silence as substantive evidence of guilt *after* she expressly invoked her right to remain silent is a direct violation of the Fifth Amendment. Thus, Ms. Smith's pre-arrest silence is not admissible, and the district court gravely erred in denying her suppression motion.

C. The District Court's Error in Denying Ms. Smith's Motion to Suppress Evidence Was Not Harmless.

In the context of a conditional guilty plea, the government must prove "beyond a reasonable doubt that the erroneously denied suppression motion did not contribute to the defendant's decision to plead guilty." *United States v. Lustig*, 830 F.3d 1075, 1091 (9th Cir. 2016). Thus, the court must determine whether the evidence at issue could have affected the defendant's decision to plead guilty. *Id.* at 1089. If the court cannot make this finding, it must remand the matter to provide the defendant the opportunity to withdraw her plea. *Id.*

This standard is one that is "necessarily hard" for the government to meet because the defendant's decision may be based on factors outside of the record and *only* she is in the position to evaluate the impact of a particular erroneous refusal to suppress evidence. *Id*.

Here, the record clearly indicates the evidence obtained from the search was essential to the Government's case and the erroneous denial of the suppression motion directly affected Ms. Smith's decision to enter a conditional guilty plea. Thus, the Government fails to meet its heavy burden. Accordingly, this Court must affirm the Twelfth Circuit's decision in vacating the district court's order and remanding the case to allow Ms. Smith to withdraw her guilty plea.

CONCLUSION

For the foregoing reasons, the Government's use of Ms. Smith's pre-arrest, pre-*Miranda* silence as substantive evidence of guilt violated her fundamental Fifth Amendment rights. Thus, the Twelfth Circuit properly held that the district court erred in denying Ms. Smith's suppression motion. Accordingly, the Respondent respectfully requests that this Court affirm the Twelfth Circuit's decision.

Applicant Details

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Last Name Sobhani
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Applicant Education

BA/BS From Georgetown University

Date of BA/BS May 2018

JD/LLB From Harvard Law School

https://hls.harvard.edu/dept/ocs/

Date of JD/LLB May 31, 2024

Class Rank School does not rank

Law Review/Journal Yes

Journal(s) Harvard Civil Rights-Civil Liberties

Law Review

Harvard Journal of Law & Gender

Moot Court Experience Yes

Moot Court Name(s) Upper Level Ames Moot Court

Competition

Bar Admission

Prior Judicial Experience

Judicial Internships/
Externships

Post-graduate Judicial Law
Clerk

Yes

Specialized Work Experience

Recommenders

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References

Ms. Julia Devanthéry, Harvard Legal Services Center, jdevanthery@law.harvard.edu, 617-390-2566;

Mr. Lawrence T. Hausman, The Legal Aid Society - Criminal Appeals Bureau, THAUSMAN@legal-aid.org, 212-577-7989;

Ms. Eliza Browning, Committee on the Administration of Justice, eliza@caj.org.uk, +44 078 648 69952

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Delana Sobhani

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June 12, 2023

The Honorable Morgan Christen United States Court of Appeals for the Ninth Circuit Old Federal Building 605 West Fourth Avenue, Suite 252 Anchorage, AK 99501-2248

Dear Judge Christen:

I am writing to apply for a clerkship in your chambers for the 2025-2026 term. After graduating from Harvard Law School in May 2024, and I will clerk for Judge Neal Kravitz on the Superior Court of the District of Columbia for the 2024-2025 term. Attached please find my resume, transcript, and writing sample. The following people have submitted letters of recommendation separately and welcome inquiries in the meantime:

Professor Guy-Uriel Charles Harvard Law School gcharles@law.harvard.edu 617-998-1742 Professor Jon D. Hanson Harvard Law School hanson@law.harvard.edu 617-496-5207

Ms. Susannah Barton Tobin Harvard Law School stobin@law.harvard.edu 617-496-3673

Please let me know if I can provide any additional information. Thank you for your time and consideration.

Sincerely,

Delana Sobhani

Delana Sobhani

dsobhani@jd24.law.harvard.edu • (703) 932-2924 • Somerville, MA

EDUCATION

Harvard Law School, J.D. Candidate, May 2024

Activities: Harvard Civil Rights-Civil Liberties Law Review, Editor

Harvard Prison Legal Assistance Project, Student Attorney

HLS Lambda and Middle Eastern & North African Law Students Association

Honors: Dean's Scholar Prize, Legal Research and Writing

Georgetown University, B.S., cum laude in International Political Economy, May 2018

Thesis: Engendering Inclusive Politics through Peacebuilding: A Micro-Level Analysis of Women's

Political Participation in Post-Conflict Liberia

EXPERIENCE

Superior Court of the District of Columbia, Washington, DC

Aug. 2024 – June 2025

Law Clerk, Chambers of Judge Neal Kravitz

Federal Community Defender Office, Philadelphia, PA

June 2023 – Present

Legal Intern, Capital Habeas Unit

Assist with the representation of death-sentenced prisoners in post-conviction litigation. Draft motions, memoranda, and briefs.

Legal Services Center, Cambridge, MA

Sept. 2022 – May 2023

Student Attorney, Housing Law Clinic

Prepared and argued motions in Housing Court to defend clients against eviction. Performed legal research on federal and state laws regarding the housing rights of survivors of gender-based violence.

The Committee on the Administration of Justice, Belfast, Northern Ireland

Jan. 2023

Legal Intern

Wrote a memorandum analyzing a novel legal question on Northern Ireland administrative law concerning the need for Executive Committee approval of ministerial action.

The Legal Aid Society, New York, NY

June – Aug. 2022

Legal Intern, Criminal Appeals Bureau

Drafted motions to resentence incarcerated clients under the Domestic Violence Survivors Justice Act. Wrote a clemency application to prevent a client's deportation, which Governor Kathy Hochul granted in December 2022.

Fulbright, Rabat, Morocco

Jan.- July 2021

Research Fellow

Studied the effects of gender quotas on Moroccan women's political representation by analyzing survey data and conducting interviews with community stakeholders.

Berkeley Research Group, Washington, DC

Aug. 2018 – Jan. 2021

Senior Associate

Jan. – Dec. 2021

Associate

Aug. 2018 – Dec. 2019

Reviewed academic and industry literature to support expert testimony in antitrust, intellectual property, and product liability litigation. Drafted sections of expert reports for use in court.

INTERESTS

Ultimate Frisbee, crochet, reading novels, and pasta (making and eating)

Harvard Law School

Date of Issue: June 7, 2023 Not valid unless signed and sealed Page 1 / 2

Record of: Delana Elizabeth Zeeba Sobhani Current Program Status: JD Candidate Pro Bono Requirement Complete

	JD Program			8034	Housing Law Clinic Devanthery, Julia	Н	4
	Fall 2021 Term: September 01 - Dece	mber 03		2199	Housing Law Clinical Workshop	Н	2
1000	Civil Procedure 7 Charles, Guy-Uriel	Н	4	7000W	Devanthery, Julia Independent Writing Farbstein, Susan	~	2
1002	Criminal Law 7 Kamali, Elizabeth Papp	Р	4			2 Total Credits:	14
1006	First Year Legal Research and Writing 7A	H*	2		Fall-Spring 2022 Term: September 01 - May 31		
	Tobin, Susannah			3500	Writing Group: Human Rights	CR	1
	* Dean's Scholar Prize			0000	Farbstein, Susan	OI (
1003	Legislation and Regulation 7 Rakoff, Todd	Н	4		Fall-Spring 202	2 Total Credits:	1
1004	Property 7	Р	4		Winter 2023 Term: January 01 - January 31		
	Smith, Henry			8099	Independent Clinical - Committee on the Administration of	of CR	2
		Fall 2021 Total Credits:	18		Justice Farbstein, Susan		
	Winter 2022 Term: January 04 - Jan	•				3 Total Credits:	2
1052	Lawyering for Justice in the United States Gregory, Michael	CR	2		Spring 2023 Term: February 01 - May 31		
	Grogory, Micriaer	Winter 2022 Total Credits:	2	2651	Civil Rights Litigation	Н	3
	Spring 2022 Term: February 01 - N	lav 13			Michelman, Scott		
1024	Constitutional Law 7	Н	4	3107	Critical Corporate Theory Lab	Н	2
1024	Gersen, Jeannie Suk	11	7	3096	Hanson, Jon Critical Race Theorists and their Critics	Н	2
1001	Contracts 7	Р	4	0000	Charles, Guy-Uriel	"	_
	Coates, John			2079	Evidence	Р	3
2068	Employment Discrimination	Н	2		Clary, Richard		
4000	Churchill, Steve		•	8034C	Housing Law Clinic - Advanced Clinical	Н	2
1006	First Year Legal Research and Writing 7A Tobin, Susannah	Н	2		Devanthery, Julia	0.7.1.0	40
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	-	Spring 2022 Total Credits:	16		Fall 2023 Term: August 30 - December 15		
		Total 2021-2022 Credits:	36	2000	Administrative Law	~	3
	Fall 2022 Term: September 01 - Dece	mber 31			Sunstein, Cass		
2050	Criminal Procedure: Investigations	Р	4	2844	Communication, Law and Social Justice	~	4
2000	Crespo, Andrew	ı	7	2035	Jenkins, Alan Constitutional Law: First Amendment	_	4
3107	Critical Corporate Theory Lab	Н	2	2033	Weinrib, Laura		7
	Hanson, Jon			2540	Reproductive Rights Advocacy	~	2
					Spera, Clara		
					continued on nex	page	

Harvard Law School

Record of: Delana Elizabeth Zeeba Sobhani

Date of Issue: June 7, 2023 Not valid unless signed and sealed Page 2 / 2

2249	Trial Advocacy Workshop Sullivan, Ronald	~	3
	,	Fall 2023 Total Credits:	16
	Spring 2024 Term: January 22 -	May 10	
2086	Federal Courts and the Federal System Fallon, Richard	~	5
8020	Harvard Immigration and Refugee Clinic Ardalan, Sabrineh	~	3
2115	Immigration and Refugee Advocacy Ardalan, Sabrineh	~	2
2169	Legal Profession: Complex Litigation Rubenstein, William	~	2
2195	Negotiation Workshop Heen, Sheila	~	4
		Spring 2024 Total Credits: Total 2023-2024 Credits: Total JD Program Credits:	16 32 97

End of official record

HARVARD LAW SCHOOL

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Transcript questions should be referred to the Registrar.

In accordance with the Family Educational Rights and Privacy Act of 1974, information from this transcript may not be released to a third party without the written consent of the current or former student.

A student is in good academic standing unless otherwise indicated.

Accreditation

Harvard Law School is accredited by the American Bar Association and has been accredited continuously since 1923.

Degrees Offered

J.D. (Juris Doctor) LL.M. (Master of Laws) S.J.D. (Doctor of Juridical Science)

Current Grading System

Fall 2008 – Present: Honors (H), Pass (P), Low Pass (LP), Fail (F), Withdrawn (WD), Credit (CR), Extension (EXT)

All reading groups and independent clinicals, and a few specially approved courses, are graded on a Credit/Fail basis. All work done at foreign institutions as part of the Law School's study abroad programs is reflected on the transcript on a Credit/Fail basis. Courses taken through cross-registration with other Harvard schools, MIT, or Tufts Fletcher School of Law and Diplomacy are graded using the grade scale of the visited school.

Dean's Scholar Prize (*): Awarded for extraordinary work to the top students in classes with law student enrollment of seven or more.

Rules for Determining Honors for the JD Program

Latin honors are not awarded in connection with the LL.M. and S.J.D. degrees.

May 2011 - Present

Summa cum laude To a student who achieves a prescribed average as described in

the Handbook of Academic Policies or to the top student in the

class

Magna cum laude Next 10% of the total class following summa recipient(s)

Cum laude Next 30% of the total class following summa and magna

recipients

All graduates who are tied at the margin of a required percentage for honors will be deemed to have achieved the required percentage. Those who graduate in November or March will be granted honors to the extent that students with the same averages received honors the previous May.

Prior Grading Systems

Prior to 1969: 80 and above (A+), 77-79 (A), 74-76 (A-), 71-73 (B+), 68-70 (B), 65-67(B-), 60-64 (C), 55-59 (D), below 55 (F)

1969 to Spring 2009: A+ (8), A (7), A- (6), B+ (5), B (4), B- (3), C (2), D (1), F (0) and P (Pass) in Pass/Fail classes

Prior Ranking System and Rules for Determining Honors for the JD Program

Latin honors are not awarded in connection with the LL.M. and S.J.D. degrees.

Prior to 1961, Harvard Law School ranked its students on the basis of their respective averages. From 1961 through 1967, ranking was given only to those students who attained an average of 72 or better for honors purposes. Since 1967, Harvard Law School does not rank students.

 1969 to June 1998
 General Average

 Summa cum laude
 7.20 and above

 Magna cum laude
 5.80 to 7.199

 Cum laude
 4.85 to 5.799

June 1999 to May 2010

Summa cum laude General Average of 7.20 and above (exception: summa cum laude for

Class of 2010 awarded to top 1% of class)

Magna cum laude Next 10% of the total class following summa recipients
Cum laude Next 30% of the total class following summa and magna

recipients

Prior Degrees and Certificates

LL.B. (Bachelor of Laws) awarded prior to 1969.

The I.T.P. Certificate (not a degree) was awarded for successful completion of the one-year International Tax Program (discontinued in 2004).

Record of: ID::

Delana Elizabeth Sobhani

818233539

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ECON	244	International Finance	3.00	Α-	11.01	
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GOVT	040	Comparative Political	3.00	A	12.00	
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GOVT	060	International Relations	3.00	Δ	11.01	
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Second Honors

Wrld:Culture

Second Honors Continued on Next Column

Title

Thought

The Problem of God

International Trade

Rdg Txts/Fr-Speak

Political & Social

Religion & Aesthetics

- Spring 2015 -

Map of the Modern World 1.00 S

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01-OUT-2019



Annamarie Blanco

Associate Vice President and Univer RAGREgistrar

GEORGETOWN UNIVERSITY EXPLANATION OF GRADING SYSTEM Effective Fall 1993

	Undergradı	ate Grading System	Graduate Grading System					
Grade	Quality Point	s Description	Grade	Quality Poi	ints Description			
Α	4.00	Superior	Α	4.00				
A-	3.67		. A-	3.67				
B+	3.33		B+	3.33				
В	3.00	Good	В	3.00				
B-	2.67		B-	2.67				
C+	2.33		C	2.00				
C	2.00	Average	F	0.00				
C-	1.67		I		Incomplete			
D+	1.33		W		Withdrawal			
D	1.00	Minimum Passing	•S		Satisfactory			
F	0.00	Failure	●U		Unsatisfactory			
W		Withdrawal	AU		Audit			
•S		Satisfactory (A,B,C)	IP .		In Progress			
●U		Unsatisfactory	NR		Grades not yet reported			
AU		Audit						
IP		In Progress						
NR		Grades not yet reported						
N		Incomplete (a temporary grade which must be resolved within	No Qual	ity Points ar	re presented on graduate records.			
FOR GRADUAT	ION: b) 120 to :	a specified time) Quality Point Index of 2.0 L42 semester hours, depending vidual program.						

SEMESTER IS 15 WEEKS

*Not included in the quality hours or Q.P.I.

Grades for courses taken in overseas study programs are recorded as given at the host institution. "CBL": indicator of Community Based Learning component

September	1962 -	August	1993
lusto Cuadina	Syctom		

June 1968 - August 1993

Undergraduate Grading System					Graduate Grading System						
Α	SUPERIOR	F	FAILURE	ΑU	AUDIT	Α	EXCELLENT	F	FAILURE	U	UNSATISFACTORY
В	GOOD	W	WITHDRAWAL	ΙP	IN PROGRESS	B+	SUPERIOR	I	INCOMPLETE	ΑU	AUDIT
C	AVERAGE	•S	SATISFACTORY	NR	NO GRADE	В	GOOD	W	WITHDRAWAL	ΙP	IN PROGRESS
			(A,B,C)		REPORTED	C	FAIR	S	SATISFACTORY	NR	NO GRADE
D	PASSING	U	UNSATISFACTORY								REPORTED

E in column headed "R" indicates course excluded from Earned Hours and GPA I in column headed "R" indicates course excluded from Earned Hours only

IN COURSES APPLICABLE TO THE DEGREE SOUGHT, QUALITY POINTS ARE ASSIGNED AS FOLLOWS: A - 4, B - 3, C - 2, D - 1, F - 0

A PLUS SIGN AFTER A GRADE CARRIES AN ADDITIONAL .5 QUALITY POINT PER CREDIT

•CREDITS ADDED IN TOTAL EARNED, NOT IN THE QUALITY HOURS, OR Q.P.I.

NO QUALITY POINTS ARE ASSIGNED TO COURSES TAKEN AS A GRADUATE STUDENT

EXPLANATION OF THE UNDERGRADUATE AND GRADUATE COURSES NUMBERING SYSTEM COURSE LEVEL **NUMBERS**

UNDERGRADUATE ONLY	001 -	- 199
UPPERCLASS UNDERGRADUATE	200 -	- 299
UNDERGRADUATE TUTORIALS, READINGS, RESEARCH	300 -	- 349
UPPERCLASS UNDERGRADUATE & GRADUATE	350 -	- 499
GRADUATE LECTURES	500 -	- 699
GRADUATE SEMINARS	700 -	- 899
GRADUATE RESEARCH, TUTORIALS, READINGS	900 -	- 999
THESIS RESEARCH		999

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SCRIP-SAFE* Security Products, Inc., Cincinnati, OH

Record of: ID::

Delana Elizabeth Sobhani 818233539



GEORGETOWN UNIVERSITY
OFFICE OF THE UNIVERSITY REGISTRAR
WASHINGTON, D.C. 20057 (202) 687-4020

Subj (Crs	Title GEO	Crd	COLUMN TO THE REAL PROPERTY.	Pts	R
GOVT 2	261	International Political Econom				
INAF 2	252	Intro to Econ & Pol Devt	3.00	A	12.00	
PECO :	201	Analytical Tools for Pol Econ	3.00	Α	12.00	
PHIL :	150	Beginning Logic	3.00	Α	12,00	
WGST 2	222		3.00		12.00	
Subj (Crs	Title	Crd	Grd	Pts	R
IPEC 4	101	Spring 2018 Senior Capstone	3.00	Α	12.00	-
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STIA 3	WITH \$ 5500 500	Global Health & Law	3.00		12.00	
	253	Gender and Int Human Rights	3.00		12.00	
WGST 3	350	Gender and Sustainability First Honors	3.00	A IV	12.00	7
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Annamarie Bianco
Associate Vice President and University Registrar

GEORGETOWN UNIVERSITY EXPLANATION OF GRADING SYSTEM Effective Fall 1993

	Undergr	aduate Grading System	Graduate Grading System						
Grade	Quality Poi	nts Description	Grade	Quality Po	oints Description				
Α	4.00	Superior	Α	4.00	•				
A-	3.67		A-	3.67					
B+	3.33		B+	3.33					
В	3.00	Good	В	3.00					
B-	2.67		B-	2.67					
C+	2.33		С	2.00					
C	2.00	Average	F	0.00					
C-	1.67		I		Incomplete				
D+	1.33		W		Withdrawal				
D	1.00	Minimum Passing	•S		Satisfactory				
F	0.00	Failure	∙U		Unsatisfactory				
W		Withdrawal	AU		Audit				
•S		Satisfactory (A,B,C)	ΙP		In Progress				
●U		Unsatisfactory	NR		Grades not yet reported				
ΑU		Audit							
IP		In Progress							
NR		Grades not yet reported							
N		Incomplete (a temporary grade	No Qual	lity Points	are presented on graduate records.				
		which must be resolved within		-					
		a specified time)							
FOR	a) Minim	um Quality Point Index of 2.0							
GRADUAT	TION: b) 120 t	o 142 semester hours, depending							
		ndividual program.							
NR N FOR	TION: b) 120 t	Grades not yet reported Incomplete (a temporary grade which must be resolved within a specified time) num Quality Point Index of 2.0 to 142 semester hours, depending	No Qual	lity Points a	are presented on graduate records				

SEMESTER IS 15 WEEKS

*Not included in the quality hours or Q.P.I.

Grades for courses taken in overseas study programs are recorded as given at the host institution.
"CBL": indicator of Community Based Learning component

	September 1962 - August 1993						June 1968 - August 1993				
Undergraduate Grading System					<u>G</u>	Graduate Grading System					
Α	SUPERIOR	F	FAILURE	ΑU	AUDIT	Α	EXCELLENT	F	FAILURE	U	UNSATISFACTORY
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C	AVERAGE	•\$	SATISFACTORY	NR	NO GRADE	В	GOOD	W	WITHDRAWAL	ΙP	IN PROGRESS
			(A,B,C)		REPORTED	C	FAIR	S	SATISFACTORY	NR	NO GRADE
D	PASSING	U	UNSATISFACTORY	,		And the second s					REPORTED

E in column headed "R" indicates course excluded from Earned Hours and GPA I in column headed "R" indicates course excluded from Earned Hours only

IN COURSES APPLICABLE TO THE DEGREE SOUGHT, QUALITY POINTS ARE ASSIGNED AS FOLLOWS: A - 4, B - 3, C - 2, D - 1, F - 0

A PLUS SIGN AFTER A GRADE CARRIES AN ADDITIONAL .5 QUALITY POINT PER CREDIT

 $\bullet \textsc{CREDITS}$ ADDED IN TOTAL EARNED, NOT IN THE QUALITY HOURS, OR Q.P.I.

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UPPERCLASS UNDERGRADUATE	200 - 299
UNDERGRADUATE TUTORIALS, READINGS, RESEARCH	300 - 349
UPPERCLASS UNDERGRADUATE & GRADUATE	350 - 499
GRADUATE LECTURES	500 - 699
GRADUATE SEMINARS	700 - 899
GRADUATE RESEARCH, TUTORIALS, READINGS	900 - 999
THESIS RESEARCH	999

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SCRIP-SAFE* Security Products, Inc., Cincinnati, OH

June 26, 2023

The Honorable Morgan Christen Old Federal Building 605 West Fourth Avenue, Suite 252 Anchorage, AK 99501-2248

Dear Judge Christen:

I write on behalf of Delana Sobhani, who is applying to you for a judicial clerkship position. Delana is brilliant, public-spirited, hardworking, and self-possessed. I am happy to recommend her highly, and without reservation.

In the fall and spring of this academic year, Delana was one of 25 students each semester in a course I teach called "Critical Corporate Theory Lab." The Lab is an unusual course. In it, the students are tasked as a group with running, expanding, promoting, and creating content for an online magazine, The law (theflaw.org). Each semester students work together as one large group to make larger decisions about the magazine, in smaller working groups to manage more specialized tasks, and individually in their reporting and writing for the magazine. (If you're interested you can review the magazine at the following url: theflaw.org.) In all of those efforts, Delana's contributions were exemplary.

The articles she wrote in each semester are superb. In the Fall, Delana wrote a fascinating article, titled "A New Dawn for Corporate America," in which she examined how large corporate actors have increasingly used bankruptcy to evade accountability. That article was so impressive that I invited her to present it at a two-day conference this January. Her presentation was, as I anticipated, one of the day's highlights. This spring she managed to write an even better article, titled "Police Unions and the Labor Movement." It is painstakingly researched and reflects impressive reporting and excellent writing on a nuanced and timely topic. Once published later this summer, it will be, in my opinion, among the most impressive and important articles on the website.

Beyond her own exceptional writing, Delana's enthusiasm for the larger project, as well as her thoughtfulness and warmth in working with others have been vital to building a friendly and productive class environment. Regarding her contributions to her working group, her teammates, when responding to an end-of-semester survey asking if there was any one student who they felt stood out, had these nice things to say:

- 1. "Delana brought so many well-thought-out contributions to class and I really enjoyed working with her."
- 2. "I felt really lucky to be working with Delana on our team. I could always, always count on her to be present, thoughtful, and thorough in our meetings."
- 3. "Delana always proactively booked us a study room for our meetings, and I really appreciated that!"
- 4. "It was a really strong team and everyone put in a lot of work, but Delana stood out. She was very on-top of what we needed to accomplish and what time lines we should follow."

I concur. In fact, Delana made several of the most insightful and constructive comments during our larger class discussions and impressed me as one of the most thoughtful students I have ever taught. She was simply a joy to have in the course and was a wonderful team-player and leader.

Based on those very positive experiences with Delana, I am confident that she would be a welcome and valuable addition to almost any chambers. I hope you will give her application your serious consideration.

Sincerely,

Jon D. Hanson Alan A. Stone Professor of Law Guy-Uriel Charles Harvard Law School Charles Ogletree, Jr. Professor of Law Lewis 309, Cambridge, MA 02138 617-998-1742

June 26, 2023

The Honorable Morgan Christen Old Federal Building 605 West Fourth Avenue, Suite 252 Anchorage, AK 99501-2248

Dear Judge Christen:

Delana Sobhani is an exceptional analytical thinker who loves to work research and write about legal problems. At the same time, she is also quite comfortable, an in fact enjoys, thinking about big policy questions and how those questions intersect with law. She is a rare student who can operate on multiple planes, the micro as well as the macro. She is one of the best students in her class. She has earned a grade of "honors" in almost all of her classes.

It is easy to see from her record that she is a person with a tremendous amount of talent. What is less evident from her record is how hard she works. She puts in the work before she speaks. She is not one to simply jump in if she does not have something to contribute. She is very deliberate.

Much of this was clear when she was a student in my Civil Procedure class. It was easy to tell from her class participation that she has a razor-sharp mind and a very supple mind. It was also clear that she was always prepared. But it was not until she came to office hours, and I talked to her outside of class that I was able to see how hard she worked. She only made it look easy.

She wrote an excellent paper for my Critical Race Theory seminar. The paper was about how law categorizes people from the Middle East. They are treated as "white" and as outsiders. The paper traces the history and makes a compelling argument for reform. In the paper, Ms. Sobhani very nicely combines doctrinal analysis with theoretical analysis. This is a clear demonstration of her ability to apply cases and doctrine to an abstract and theoretical problem.

Ms. Sobhani is deeply committed to democracy and democratic governance. She comes by this commitment honestly. She was a Fulbright in Morocco researching women's political participation. She has devoted a significant amount of her time here at HLS to the Housing Clinic. She is someone who will make a difference wherever she is.

She has all of the qualities to be a remarkable law clerk. She works hard and takes instructions easily. She is a self-starter. She is careful and meticulous. I have also seen a tremendous amount of growth from her between her first year and her second year. She is more comfortable expressing her opinions and taking positions. Thus, even though she is a super student and a great person, she continually seeks challenges and tries to be a better lawyer and a better human. I am confident that she will succeed in whatever Chambers that is lucky to attract her. I, therefore, give her my highest recommendation.

Sincerely,

Guy-Uriel Charles Charles Ogletree, Jr. Professor of Law June 26, 2023

The Honorable Morgan Christen Old Federal Building 605 West Fourth Avenue, Suite 252 Anchorage, AK 99501-2248

Dear Judge Christen:

I'm delighted to recommend Delana Sobhani for a clerkship in your chambers. Delana will be an outstanding clerk, bringing to chambers a strong mix of high intelligence, careful attention to detail, and principled character. I have known Delana since September of 2021, when she joined my forty-person First-Year Legal Research and Writing (LRW) section. Over the course of our full-year class, I had the opportunity to interact with Delana both in class and in several one-on-one conferences about her written work. We also met regularly in office hours to discuss career plans, current events, and the process of adjusting to law school. In the fall semester, focused on predictive memo writing, Delana was one of the top students in the class, earning one of only three Dean's Scholar Prizes for her outstanding memo writing. In the spring, focused on appellate brief-writing, she and her moot court partner easily earned an Honors for their incisive, persuasive advocacy. With her combination of outstanding legal skills, elegant writing style, and thoughtful demeanor, Delana will make a terrific law clerk. Let me say a bit more about each of these qualifications.

Delana hit the ground running in law school, as her strong transcript shows. In my class, she brought already-outstanding research skills to bear on our assignments and worked thoughtfully to master the somewhat alien form of legal writing. (Delana worked for three-and-a-half years between college and law school at the Berkeley Research Group, experience that not only helped sharpen her research and writing but also gave her maturity and perspective that have helped her approach law school.) Delana was receptive to feedback, always coming to our conferences prepared with questions and comments in response to my written criticism. We had lots of fun discussions about ways to keep elegance and spark in legal writing despite the rigid constraints of the form—and Delana delivered. She developed a real skill at explaining precedent clearly and concisely and applying it to new sets of facts. She loves research and was passionate from day one about digging into Lexis & Westlaw to run down every last thread.

Delana has also pursued every opportunity to hone her legal writing over the past year, reflecting not just her innate talent but also her commitment to growth. She took on several independent writing projects, on topics ranging from human rights, to bankruptcy and corporate accountability, to the uneasy relationship between police unions and labor writ large. For each of these, we met to discuss her ideas, and I was consistently impressed by her thorough approach to research, her willingness to take feedback and adjust her approach, and her ability to juggle multiple projects at once, all qualities that will serve her well as a law clerk. In addition to her independent writing, Delana engaged in substantial legal writing through the Housing Law Clinic under the supervision of Julia Devanthery, writing under separate cover. All this work is in addition to her first-year summer internship at the Criminal Appeals Bureau at the Legal Aid Society, where, among things, she drafted a clemency petition that was granted by the governor this fall.

Delana plans a career either in criminal appeals (she is interning this summer at the capital habeas unit of the Federal Community Defender Office in Philadelphia) or impact litigation, both paths for which a clerkship will be especially helpful. But more than the preparation a clerkship would provide, Delana is eager to clerk for the work itself—she is eager to dig into a wide range of legal questions and collaborate as a member of a close-knit team. She highlights teamwork as a particular skill, and I saw it firsthand in her peer editing in LRW, where she carefully reviewed her colleagues' work and provided constructive, detailed feedback. Delana has also collaborated with fellow students in her extracurricular activities, including the Civil Rights-Civil Liberties Law Review, the Prison Legal Assistance Project, and the Middle Eastern and North African Law Students Association.

Finally, Delana would be an asset to the broader chambers community. She is soft-spoken but confident in conversation, with wit and allusive skill. She reads widely both within and beyond the law and enjoys cycling and spending time outdoors with her family and friends. Despite managing a challenging courseload and extensive public service work, Delana takes a calm and balanced approach to the stresses of law school that will serve her well as she embarks on her career.

In short, I recommend Delana with great enthusiasm and no reservations. Please do not hesitate to contact me if I can provide further information about this excellent candidate. You can reach me by phone at (617) 496-3673 or via email at stobin@law.harvard.edu.

Sincerely,

Susannah Barton Tobin Managing Director, Climenko Program Assistant Dean for Academic Career Advising

Susannah Barton Tobin - stobin@law.harvard.edu - 617-496-3673

Delana Sobhani

dsobhani@jd24.law.harvard.edu • (703) 932-2924 • Somerville, MA

WRITING SAMPLE

Drafted Fall 2021 Legal Research and Writing Course Final Assignment

Attached is a memorandum that contains only my individual work. I submitted it as my final assignment for my 1L Legal Research and Writing course after receiving feedback on a draft from my professor.

MEMORANDUM

To: Jane M. Bolin, Assistant U.S. Attorney, Civil Division Chief

From: Delana Sobhani Date: November 23, 2021

Re: Kovacs v. United States, No. 2:20-CV-0014—Motion to Dismiss FTCA Suit Pursuant to

the Scope of Employment Requirement and Discretionary Function Exception

Questions Presented

Peter Kovacs is suing the federal government in the United States District Court for the District of Minnesota for injuries he and his son sustained in a bear attack at Voyageurs National Park in Minnesota. The attack occurred after park rangers drunkenly tore down bear warning signs in accordance with the park manger's sign replacement plan, leaving the campsite without warning signs in the days following a previous bear attack. The United States seeks to win the case on a 12(b)(1) motion to dismiss by showing that Plaintiffs cannot sue under the Federal Tort Claims Act ("FTCA").

- I. Can the United States succeed on the argument that it is not liable for the park rangers' conduct under the FTCA because they acted outside the scope of their employment pursuant to Minnesota law?
- II. Can the United States succeed on the argument that the park manager's decisions fall within the discretionary function exception to the FTCA?

Brief Answers

- I. Probably not. The park rangers' removal of the bear warning signs satisfies Minnesota's scope of employment test because their on-duty conduct at the park furthered the United States' interests and was both authorized and reasonably foreseeable by the United States.
- II. Probably yes. The park manager's decisions to develop and deploy the sign replacement plan fall within the discretionary function exception to the FTCA because his decisions

1

were discretionary and implicated socio-economic policy considerations such as visitor safety and budget management.

Facts

Plaintiff Peter Kovacs has filed suit against the United States on behalf of himself and his minor son, A.K., to recover damages for injuries they sustained in a bear attack at Voyageurs National Park in Minnesota (the "Park"). Plaintiffs allege that their injuries arose out of the negligence of National Park Service employees John Coltrane (the "Park Manager") and Sarah Vaughan and John Gillespie (together, the "Park Rangers"), all of whom have a responsibility to promote "visitor protection and services" pursuant to the Position Classification Standard for Park Ranger Series, GS-0025 (the "Classification Standard"). R at 16.

On May 31, 2020, the Park Manager emailed park rangers directing them to remove the "old, crumbling bear warning signs at all campsites" so that contractors could install new signs due to arrive later that week. R. at 1-2, 10. Although this plan would temporarily leave some sites without signs, he explained that they lacked the resources to hire short-term workers to remove the old signs as new ones arrived. R. at 10. The next day, a bear killed a girl near the Park's Lewis Campsite. The National Park Service sent agents to track and euthanize it, although they did not successfully capture the bear until after the attack at issue in this case. R. at 2.

On June 2, the Park Manager instructed the Park Rangers to continue removing the bear warning signs but to take down the signs near the Lewis Campsite last. R. at 8. The new signs were delayed, and on the afternoon of Saturday, June 13, the Park Manager emailed the Park Rangers, "if you get this in time, please put off removing" the Lewis Campsite signs since the contractors were not going to replace them until Monday. R. at 10. The Park Rangers responded that they had already removed the signs, to which the Park Manager replied, "that shouldn't be

an issue, I expect nothing will happen over the weekend." *Id.* The Park Manager did, however, reprimand the Park Rangers for drunkenly hacking the signs to pieces so that they could "have some fun" during their usual Saturday night drinks. R. at 11. He stated he has "generally been fine with" their weekly drinks but instructed them to keep their drinking discreet. *Id.*

On Monday, June 14, Plaintiffs went to the Lewis Campsite, which had no bear warning signs. The same bear from the June 1 attack then ambushed Plaintiffs, who suffered physical harm and mental anguish. R. at 3. A.K. sustained severe injuries and permanent disability. *Id.* Plaintiffs allege that the negligence of (1) the Park Rangers in removing the signs and (2) the Park Manager in developing a sign replacement plan that would leave the Lewis Campsite without warning signs were the factual and legal cause of their injuries. R. at 3-4.

Discussion

The federal government can likely dismiss the case for lack of subject matter jurisdiction, Fed. R. Civ. P. 12(b)(1), on the argument it is not liable for the Park Manager's decisions under the FTCA. For a 12(b)(1) motion to dismiss, Plaintiffs bear the burden of proving that the court may assert subject matter jurisdiction over the claim at issue. *See V S Ltd. P'ship v. Dep't of Hous. & Urban Dev.*, 235 F.3d 1109, 1112 (8th Cir. 2000). The court lacks subject matter jurisdiction if Plaintiffs cannot sue the United States under the FTCA, which does not apply if employees' (1) conduct was outside the scope of employment, 28 U.S.C. § 2679(d)(1), or (2) decisions fall within the discretionary function exception. 28 U.S.C. § 2680(a). Although the court will likely determine that the Park Rangers acted within the scope of their employment, the court will probably find that the Park Manager's decisions are protected under the discretionary function exception.

I. The Park Rangers acted within the scope of their employment pursuant to Minnesota law.

Under the FTCA, the United States is not liable for government employees' conduct if they were acting outside the scope of their employment. 28 U.S.C § 2679(d)(1). The law of the state where the conduct occurred is the applicable substantive law determining whether the conduct falls within the scope of employment. *See, e.g., Wollman v. Gross*, 637 F.2d 544, 547 (8th Cir. 1980). At Minnesota common law, an employee's alleged negligence is within the scope of employment if: "his conduct was, to some degree, in furtherance of the interests of his employer;" "the conduct is of the kind that the employee is authorized to perform;" "the act occurs within authorized time and space restrictions," *Edgewater Motels, Inc. v. Gatzke*, 277 N.W.2d 11, 15 (Minn. 1979); and "the employer should reasonably have foreseen the employee's conduct," *Hentges v. Thomford*, 569 N.W.2d 424, 428 (Ct. App. Minn. 1997). Because park rangers are on duty 24 hours a day while in the Park, the "time and space" restrictions prong is not disputed in this case.

The court will likely find that the Park Rangers acted within the scope of their employment pursuant to the multi-factor test established by Minnesota law. The relevant conduct for the scope of employment analysis is the allegedly negligent act that caused the plaintiff's injury. See, e.g., Edgewater Motels, Inc. v. Gatzke, 277 N.W.2d at 16. Plaintiffs contend that the Park Rangers caused their injuries by negligently removing bear warnings signs from the Lewis campsite. R. at 3. Thus, the conduct at issue is the Park Rangers' removal of the bear warning signs. Applying Minnesota's multi-factor test to this conduct, the court will likely find that the Park Rangers acted within the scope of their employment.

A. The Park Rangers' conduct was in furtherance of the United States' interests.

For an employee's conduct to be in furtherance of their employer's interests, it must serve the employer "at least in part" or "to some degree." *See Hentges v. Thomford*, 569 N.W.2d at 428;

4

Edgewater Motels, Inc. v. Gatzke, 277 N.W.2d at 15. The employee's state of mind is relevant to this determination, Hentges v. Thomford, 569 N.W.2d at 428, such that an act motivated by an intent to perform a task for work is in furtherance of the employer's interests. Edgewater Motels, Inc. v. Gatzke, 277 N.W.2d at 15 (referencing Restatement Agency 2d, § 235). When a work-related act is accompanied by conduct that deviates from an employee's strict course of duty, the conduct is still in furtherance of the employer's interests if the main purpose of the work-related act is to carry out the interests of the employer. Id. at 16; see also Mosby v. McGee, No. CIV 07-3905 JRT/RLE, 2009 WL 2171104, at *4 (D. Minn. July 20, 2009).

The Park Rangers removed the old bear warning signs in furtherance of the United States' interests to efficiently manage park resources and facilitate visitor safety. In *Edgewater Motels, Inc. v. Gatzke*, the court found that an employee whose negligent smoking started a motel fire during a work trip was acting in furtherance of his employer's interests because he was filling out an expense report for his employer at the time. *Edgewater Motels, Inc. v. Gatzke*, 277 N.W.2d at 17. Like Gatzke, whose negligent conduct occurred while performing a task to promote his employer's business interests in keeping detailed financial records, the Park Rangers' allegedly negligent conduct occurred while they performed a task to promote the United States' interests in efficiently maintaining a safe National Park. The Park Rangers removed the old, crumbling bear warning signs to ensure that contractors could install new signs. While it is true that the Park Rangers drunkenly hacked the signs with a hatchet to "have some fun," R. at 11, their primary purpose in removing the signs was to complete a task for work, so their conduct was still serving the United States. As such, the court will likely find that the Park Rangers' removal of the bear warning signs was in furtherance of the United States' interests.

B. The Park Rangers' conduct was authorized by the United States.

The Minnesota courts have not defined employer-authorized conduct in common law tort liability cases; however, workers' compensation cases are instructive because they invoke a similar scope of employment analysis, despite their specific statutory basis. *See*, *e.g.*, *Stringer v. Minn. Vikings Football Club*, *LLC*, 705 N.W.2d 746, 761 (Minn. 2005) (finding that "acting within the course and scope of employment is what brings the coemployee within the protection of the workers' compensation system"). Conduct is authorized in workers' compensation cases if it is either (1) required by the employer, *see id.*, or (2) incidental to the nature of the employment. *Cf. Weidenbach v. Miller*, 237 Minn. 278, 291 (Minn. 1952). The performance of authorized acts in a prohibited manner is distinct from the performance of prohibited acts, such that the conduct of an employee who improperly does what they are directed to do is still authorized. *See Lange v. Minneapolis-Saint Paul Metropolitan Airports Com.*, 257 Minn. 54, 57 (Minn. 1959); *Bartley v. C--H Riding Stables, Inc.*, 296 Minn. 115, 118-119 (Minn. 1973).

Because the Park Rangers' removal of the bear warning signs was both explicitly directed by the Park Manager and incidental to their work as Park Rangers, the court will likely find that their conduct was authorized by the United States. In *Murray v. United States*, the court ruled that a National Guard trainee's choice to drive herself and her friend to school, as she routinely did, was not authorized because her National Guard orders did not mandate a type of transportation or route for her to take to school. *Murray v. United States*, 258 F. Supp. 2d 1006, 1013 (D. Minn. 2003). In contrast to the National Guard trainee in *Murray*, the Park Rangers were following direct orders. After the June 1 bear attack, the Park Manager instructed the Park Rangers to continue removing bear warning signs, thereby expressly authorizing the Park Rangers' conduct. R. at 8. While the Park Manager later told the Park Rangers to wait to

remove the signs at the Lewis Campsite, when he learned they had already done so, he stated that "it shouldn't be a problem" and did not instruct the Park Rangers to take further action. *Id.* at 10.

Furthermore, the Park Rangers' conduct was authorized because removing bear warning signs is incidental to the work of park rangers. The Classification Standard establishes visitor protection as a park ranger responsibility, R. at 15-16, which the court may logically infer includes the replacement of old, crumbling bear warning signs at campsites. Although the Park Rangers may have removed the signs in an improper way by drunkenly hacking them to pieces, the act of removing the signs themselves was still authorized conduct. *See Bartley v. C--H Riding Stables, Inc.*, 296 Minn. at 118-119 (holding that specifically prohibited acts, as opposed to legitimate acts accomplished in a forbidden manner, are outside the scope of employment). Thus, the court will likely find that the United States authorized the Park Rangers' conduct.

C. The United States should reasonably have foreseen the Park Rangers' conduct.

While the Minnesota courts have addressed the "reasonably foreseeable" prong in the context of employer liability for intentional torts, the courts have yet to rigorously apply this analysis to negligent misconduct. The standard for intentional torts is that an employer need not actually foresee the alleged misconduct if it is "not so unusual or startling that it would seem unfair to include the loss resulting from it among other costs of the employer's business."

Hagen, 633 N.W.2d at 505 (quoting Fahrendorff, 597 N.W.2d at 912).

In comparison, the sparse rulings on negligent misconduct link foreseeability to employer control. *See Murray v. United States*, 258 F. Supp. 2d at 1013; *Western National Mutual Insurance Co. v. United States*, 964 F. Supp. 295, 297-98 (D. Minn. 1997). The court may evaluate the foreseeability of the Park Rangers' conduct in a manner consistent with the standards for both tortious and negligent misconduct, such that the conduct is reasonably

foreseeable if the employer provides policies on (1) whether to engage in the conduct, *cf. Miles v. Simmons Univ.*, 514 F. Supp. 3d 1070, 1077 (D. Minn. 2021), and if permitted, (2) how to engage in the conduct, *cf. Murray v. United States*, 258 F. Supp. 2d at 1013.

The court will probably find that the United States should reasonably have foreseen the Park Rangers' removal of the bear warning signs because the Classification Standard provides guidance on whether and how to engage in such conduct to promote visitor safety. In *Miles v. Simmons Univ.*, the court held that the plaintiff failed to show that Simmons University could have reasonably foreseen that a professor would post a class recording that displayed a student using the restroom because the plaintiff did not establish that the University had adopted confidentiality policies instructing professors on whether and how to avoid sharing students' personal information via Zoom. *See Miles v. Simmons Univ.*, 514 F. Supp. 3d at 1077. Unlike Simmons University, the United States adopted the Classification Standard to instruct park rangers to "carry out resource management and protection work." R. at 17. Insofar as Plaintiffs amend their complaint to show that the Classification Standard demonstrates that removing bear warning signs was reasonably foreseeable, the court will likely hold that the United States should reasonably have foreseen the Park Rangers' conduct.

II. The Park Manager's decisions likely fall under the discretionary function exception to the FTCA.

The discretionary function exception provides the federal government with immunity against liability for claims "based upon an act or omission of an employee of the Government, exercising due care...or based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a federal agency or an employee of the Government." 28 U.S.C § 2680(a). This exception applies if a government employee's decision was (1) discretionary and (2) implicated public policy considerations. See Berkovitz by Berkovitz

v. United States, 486 U.S. 531, 108 S. Ct. 1954, 100 L. Ed. 2d 531 (1988). Plaintiffs have not claimed that, nor does there appear to exist, any regulation that mandated a particular course of action by the Park Manager, so the "discretionary" prong of the Berkovitz test is not in dispute. Because the Park Manager's decisions to develop and deploy a bear warning sign replacement plan were discretionary and most likely implicated public policy considerations, the discretionary function exception will likely apply to the Park Manager's decisions.

When governmental policy permits the exercise of discretion, it is presumed that the act is grounded in policy, so the plaintiff must offer evidence to rebut that presumption. *See United States v. Gaubert*, 499 U.S. 315, 325 (1991). As an affirmative defense, the federal government must show only that the decision was "susceptible to policy analysis." *Id.* Decisions that (1) require weighing competing issues and (2) involve social, economic, or political considerations are susceptible to policy analysis. *See United States v. Gaubert*, 499 U.S. at 325; *Chantal v. United States*, 104 F.3d 2017, 212 (8th Cir. 1997); *Metter v. United States*, 785 F.3d 1227, 1233 (8th Cir. 2015). Since "the decision to warn is, at its core, a policy decision," *Croyle by and through Croyle v. United States*, 908 F.3d 377, 381 (8th Cir. 2018) (quoting *Hinsley*, 516 F.3d at 673), a subsequent decision to revise a warning policy is itself a decision that implicates public policy considerations. *See Metter v. United States*, 785 F.3d 1227 at 1233.

The court will likely find that the Park Manager's decisions to develop and deploy a sign replacement plan implicated public policy. In *Metter v. United States*, the court held that decisions by the U.S. Army Corps of Engineers ("Corps") to remove and re-install guardrails along a road implicated public policy because the Corps' decisions on if, when, and how to replace the guardrails involved balancing the purpose of the road, the allocation of funds, the timing of repairs and maintenance work, and the safety of drivers. *Metter v. United States*, 785

F.3d 1227 at 1233. Likewise, the Park Manager's decisions on if, when, and how to replace the bear warning signs involved balancing the purpose of the Park, the budget, the timing of sign removal and the contractors' re-installation, as well as visitor safety. Because the Park Manager weighed similar economic and safety factors as the Corps in *Metter*, the Park Manager's decision also implicated public policy considerations.

While Plaintiffs could argue that the recent bear attack created a duty for the Park Manager to postpone the sign replacement plan, the court will likely still find that the Park Manager's decisions implicated public policy. It is true that the Park Manager could have kept the existing signs up until the offending bear was caught to avoid leaving campsites without warnings; however, just because the Park already had bear warning signs does not erase the policy considerations inherent to the decisions on how to warn. *See Demery v. U.S. Dep't of Interior*, 357 F.3d 830, 833 (8th Cir. 2004) (rejecting Plaintiff's argument that once a governmental agency has decided to issue warnings, the decision on how to warn is not susceptible to policy analysis because then the government would be unreasonably open to suit). As such, the court will likely find that the Park Manager's decisions implicated public policy considerations and therefore fall within the discretionary function exception.

Conclusion

Although the Park Rangers' removal of the bear warning signs was probably within the scope of their employment, the federal government will likely prevail on a 12(b)(1) motion to dismiss because the Park Manager's decisions to develop and deploy a sign replacement plan were susceptible to public policy analysis and are thus protected under the discretionary function exception to the FTCA.

Applicant Details

First Name Delana
Last Name Sobhani
Citizenship Status U. S. Citizen

Email Address <u>dsobhani@jd24.law.harvard.edu</u>

Address Address

Street

182 Highland Avenue

City

Somerville State/Territory Massachusetts

Zip 02143 Country United States

Contact Phone Number 7039322924

Applicant Education

BA/BS From Georgetown University

Date of BA/BS May 2018

JD/LLB From Harvard Law School

https://hls.harvard.edu/dept/ocs/

Date of JD/LLB May 31, 2024

Class Rank School does not rank

Law Review/Journal Yes

Journal(s) Harvard Civil Rights-Civil Liberties

Law Review

Harvard Journal of Law & Gender

Moot Court Experience Yes

Moot Court Name(s) Upper Level Ames Moot Court

Competition

Bar Admission

Prior Judicial Experience

Judicial Internships/
Externships

Post-graduate Judicial Law
Clerk

Yes

Specialized Work Experience

Recommenders

Charles, Guy-Uriel gcharles@law.harvard.edu Tobin, Susannah Barton stobin@law.harvard.edu 617-496-3673 Hanson, Jon hanson@law.harvard.edu 617-496-5207

References

Ms. Julia Devanthéry, Harvard Legal Services Center, jdevanthery@law.harvard.edu, 617-390-2566;

Mr. Lawrence T. Hausman, The Legal Aid Society - Criminal Appeals Bureau, THAUSMAN@legal-aid.org, 212-577-7989;

Ms. Eliza Browning, Committee on the Administration of Justice, eliza@caj.org.uk, +44 078 648 69952

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Delana Sobhani

dsobhani@jd24.law.harvard.edu • (703) 932-2924 • Somerville, MA

June 12, 2023

The Honorable Morgan Christen United States Court of Appeals for the Ninth Circuit Old Federal Building 605 West Fourth Avenue, Suite 252 Anchorage, AK 99501-2248

Dear Judge Christen:

I am writing to apply for a clerkship in your chambers for the 2025-2026 term. After graduating from Harvard Law School in May 2024, and I will clerk for Judge Neal Kravitz on the Superior Court of the District of Columbia for the 2024-2025 term. Attached please find my resume, transcript, and writing sample. The following people have submitted letters of recommendation separately and welcome inquiries in the meantime:

Professor Guy-Uriel Charles Harvard Law School gcharles@law.harvard.edu 617-998-1742 Professor Jon D. Hanson Harvard Law School hanson@law.harvard.edu 617-496-5207

Ms. Susannah Barton Tobin Harvard Law School stobin@law.harvard.edu 617-496-3673

Please let me know if I can provide any additional information. Thank you for your time and consideration.

Sincerely,

Delana Sobhani

Delana Sobhani

dsobhani@jd24.law.harvard.edu • (703) 932-2924 • Somerville, MA

EDUCATION

Harvard Law School, J.D. Candidate, May 2024

Activities: Harvard Civil Rights-Civil Liberties Law Review, Editor

Harvard Prison Legal Assistance Project, Student Attorney

HLS Lambda and Middle Eastern & North African Law Students Association

Honors: Dean's Scholar Prize, Legal Research and Writing

Georgetown University, B.S., cum laude in International Political Economy, May 2018

Thesis: Engendering Inclusive Politics through Peacebuilding: A Micro-Level Analysis of Women's

Political Participation in Post-Conflict Liberia

EXPERIENCE

Superior Court of the District of Columbia, Washington, DC

Aug. 2024 – June 2025

Law Clerk, Chambers of Judge Neal Kravitz

Federal Community Defender Office, Philadelphia, PA

June 2023 – Present

Legal Intern, Capital Habeas Unit

Assist with the representation of death-sentenced prisoners in post-conviction litigation. Draft motions, memoranda, and briefs.

Legal Services Center, Cambridge, MA

Sept. 2022 – May 2023

Student Attorney, Housing Law Clinic

Prepared and argued motions in Housing Court to defend clients against eviction. Performed legal research on federal and state laws regarding the housing rights of survivors of gender-based violence.

The Committee on the Administration of Justice, Belfast, Northern Ireland

Jan. 2023

Legal Intern

Wrote a memorandum analyzing a novel legal question on Northern Ireland administrative law concerning the need for Executive Committee approval of ministerial action.

The Legal Aid Society, New York, NY

June – Aug. 2022

Legal Intern, Criminal Appeals Bureau

Drafted motions to resentence incarcerated clients under the Domestic Violence Survivors Justice Act. Wrote a clemency application to prevent a client's deportation, which Governor Kathy Hochul granted in December 2022.

Fulbright, Rabat, Morocco

Jan.- July 2021

Research Fellow

Studied the effects of gender quotas on Moroccan women's political representation by analyzing survey data and conducting interviews with community stakeholders.

Berkeley Research Group, Washington, DC

Aug. 2018 – Jan. 2021

Senior Associate

Jan. – Dec. 2021

Associate

Aug. 2018 – Dec. 2019

Reviewed academic and industry literature to support expert testimony in antitrust, intellectual property, and product liability litigation. Drafted sections of expert reports for use in court.

INTERESTS

Ultimate Frisbee, crochet, reading novels, and pasta (making and eating)

Harvard Law School

Date of Issue: June 7, 2023 Not valid unless signed and sealed Page 1 / 2 Record of: Delana Elizabeth Zeeba Sobhani Current Program Status: JD Candidate Pro Bono Requirement Complete

	JD Program			8034	Housing Law Clinic F Devanthery, Julia	1	4
	Fall 2021 Term: September 01 - Decen	nber 03		2199	Housing Law Clinical Workshop	1	2
1000	Civil Procedure 7	Н	4		Devanthery, Julia		
	Charles, Guy-Uriel			7000W	Independent Writing ~	•	2
1002	Criminal Law 7	Р	4		Farbstein, Susan		
	Kamali, Elizabeth Papp				Fall 2022 Total Cre	edits:	14
1006	First Year Legal Research and Writing 7A	H*	2		Fall-Spring 2022 Term: September 01 - May 31		
	Tobin, Susannah			3500	Writing Group: Human Rights C	CR	1
	* Dean's Scholar Prize			3300	Farbstein, Susan	Л	'
1003	Legislation and Regulation 7	Н	4		Fall-Spring 2022 Total Cre	edits:	1
	Rakoff, Todd				• •	Julio.	'
1004	Property 7	Р	4		Winter 2023 Term: January 01 - January 31		
	Smith, Henry			8099	Independent Clinical - Committee on the Administration of	CR	2
		Fall 2021 Total Credits:	18		Justice		
	Winter 2022 Term: January 04 - Janu	arv 21			Farbstein, Susan		
4050	•	•	•		Winter 2023 Total Cre	edits:	2
1052	Lawyering for Justice in the United States Gregory, Michael	CR	2		Spring 2023 Term: February 01 - May 31		
	1	Vinter 2022 Total Credits:	2	2651	Civil Rights Litigation	H	3
	Spring 2022 Term: February 01 - Ma	nv 13			Michelman, Scott		
		•		3107	Critical Corporate Theory Lab	1	2
1024	Constitutional Law 7	Н	4		Hanson, Jon		
1001	Gersen, Jeannie Suk			3096	Critical Race Theorists and their Critics	1	2
1001	Contracts 7	Р	4		Charles, Guy-Uriel		
0000	Coates, John		0	2079	Evidence F)	3
2068	Employment Discrimination	Н	2		Clary, Richard		
1006	Churchill, Steve	Н	2	8034C	Housing Law Clinic - Advanced Clinical	1	2
1006	First Year Legal Research and Writing 7A Tobin, Susannah	П	2		Devanthery, Julia		
1005	Torts 7	Н	4		Spring 2023 Total Cre		12
1005	Sargentich, Lewis	11	4		Total 2022-2023 Cre	eaits:	29
	·	Spring 2022 Total Credits:	16		Fall 2023 Term: August 30 - December 15		
	`	Total 2021-2022 Credits:	36	2000	Administrative Law ~		3
			00	2000	Sunstein, Cass		Ū
	Fall 2022 Term: September 01 - Decen	iber 31		2844	Communication, Law and Social Justice ~		4
2050	Criminal Procedure: Investigations	Р	4		Jenkins, Alan		·
	Crespo, Andrew			2035	Constitutional Law: First Amendment		4
3107	Critical Corporate Theory Lab	Н	2		Weinrib, Laura		
	Hanson, Jon			2540	Reproductive Rights Advocacy ~	•	2
					Spera, Clara		
					•		
					continued on next page		

Harvard Law School

Record of: Delana Elizabeth Zeeba Sobhani

Date of Issue: June 7, 2023 Not valid unless signed and sealed Page 2 / 2

2249	Trial Advocacy Workshop Sullivan, Ronald	~	3
	••••••	Fall 2023 Total Credits:	16
	Spring 2024 Term: January 22 -	May 10	
2086	Federal Courts and the Federal System Fallon, Richard	~	5
8020	Harvard Immigration and Refugee Clinic Ardalan, Sabrineh	~	3
2115	Immigration and Refugee Advocacy Ardalan, Sabrineh	~	2
2169	Legal Profession: Complex Litigation Rubenstein, William	~	2
2195	Negotiation Workshop Heen, Sheila	~	4
		Spring 2024 Total Credits: Total 2023-2024 Credits: Total JD Program Credits:	16 32 97

End of official record

HARVARD LAW SCHOOL

Office of the Registrar 1585 Massachusetts Avenue Cambridge, Massachusetts 02138 (617) 495-4612 www.law.harvard.edu registrar@law.harvard.edu

Transcript questions should be referred to the Registrar.

In accordance with the Family Educational Rights and Privacy Act of 1974, information from this transcript may not be released to a third party without the written consent of the current or former student.

A student is in good academic standing unless otherwise indicated.

Accreditation

Harvard Law School is accredited by the American Bar Association and has been accredited continuously since 1923.

Degrees Offered

J.D. (Juris Doctor) LL.M. (Master of Laws) S.J.D. (Doctor of Juridical Science)

Current Grading System

Fall 2008 – Present: Honors (H), Pass (P), Low Pass (LP), Fail (F), Withdrawn (WD), Credit (CR), Extension (EXT)

All reading groups and independent clinicals, and a few specially approved courses, are graded on a Credit/Fail basis. All work done at foreign institutions as part of the Law School's study abroad programs is reflected on the transcript on a Credit/Fail basis. Courses taken through cross-registration with other Harvard schools, MIT, or Tufts Fletcher School of Law and Diplomacy are graded using the grade scale of the visited school.

Dean's Scholar Prize (*): Awarded for extraordinary work to the top students in classes with law student enrollment of seven or more.

Rules for Determining Honors for the JD Program

Latin honors are not awarded in connection with the LL.M. and S.J.D. degrees.

May 2011 - Present

Summa cum laude To a student who achieves a prescribed average as described in

the Handbook of Academic Policies or to the top student in the

class

Magna cum laude Next 10% of the total class following summa recipient(s)

Cum laude Next 30% of the total class following summa and magna

recipients

All graduates who are tied at the margin of a required percentage for honors will be deemed to have achieved the required percentage. Those who graduate in November or March will be granted honors to the extent that students with the same averages received honors the previous May.

Prior Grading Systems

Prior to 1969: 80 and above (A+), 77-79 (A), 74-76 (A-), 71-73 (B+), 68-70 (B), 65-67(B-), 60-64 (C), 55-59 (D), below 55 (F)

1969 to Spring 2009: A+ (8), A (7), A- (6), B+ (5), B (4), B- (3), C (2), D (1), F (0) and P (Pass) in Pass/Fail classes

Prior Ranking System and Rules for Determining Honors for the JD Program

Latin honors are not awarded in connection with the LL.M. and S.J.D. degrees.

Prior to 1961, Harvard Law School ranked its students on the basis of their respective averages. From 1961 through 1967, ranking was given only to those students who attained an average of 72 or better for honors purposes. Since 1967, Harvard Law School does not rank students.

 1969 to June 1998
 General Average

 Summa cum laude
 7.20 and above

 Magna cum laude
 5.80 to 7.199

 Cum laude
 4.85 to 5.799

June 1999 to May 2010

Summa cum laude General Average of 7.20 and above (exception: summa cum laude for

Class of 2010 awarded to top 1% of class)

Magna cum laude Next 10% of the total class following summa recipients
Cum laude Next 30% of the total class following summa and magna

recipients

Prior Degrees and Certificates

LL.B. (Bachelor of Laws) awarded prior to 1969.

The I.T.P. Certificate (not a degree) was awarded for successful completion of the one-year International Tax Program (discontinued in 2004).

Record of: ID::

PHIL 099

053

THEO

Delana Elizabeth Sobhani

818233539



GEORGETOWN UNIVERSITY
OFFICE OF THE UNIVERSITY REGISTRAR
WASHINGTON, D.C. 20057
(202)687-4020

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GOVT	040	Comparative Political	3.00	Α	12.00	
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Political & Social

Religion & Aesthetics

Thought

Second Honors
Continued on Next Column-

4.00 B+

3.00 A

13.32

12.00

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01-OUT-2019



Chranarie Bianço
Annamarie Bianço

Associate Vice President and University Registrar

GEORGETOWN UNIVERSITY EXPLANATION OF GRADING SYSTEM Effective Fall 1993

	Undergrad	duate Grading System	Graduate Grading System					
Grade	Quality Poin	ts Description	Grade	Quality Points	s Description			
Α	4.00	Superior	Α	4.00				
A-	3.67		.A-	3.67				
B+	3.33		B+	3.33				
В	3.00	Good	В	3.00				
B-	2.67		B-	2.67				
C+	2.33		C	2.00				
C	2.00	Average	F	0.00				
C-	1.67		I		Incomplete			
D+	1.33		W		Withdrawal			
D	1.00	Minimum Passing	•S		Satisfactory			
F	0.00	Failure	●U		Unsatisfactory			
W		Withdrawal	AU		Audit			
•S		Satisfactory (A,B,C)	IP .		In Progress			
●U		Unsatisfactory	NR		Grades not yet reported			
AU		Audit						
IP		In Progress						
NR		Grades not yet reported						
N		Incomplete (a temporary grade which must be resolved within a specified time)	No Qual	ity Points are _l	presented on graduate records.			
FOR GRADUAT	ION: b) 120 to	m Quality Point Index of 2.0 142 semester hours, depending dividual program.						

SEMESTER IS 15 WEEKS

*Not included in the quality hours or Q.P.I.

Grades for courses taken in overseas study programs are recorded as given at the host institution. "CBL": indicator of Community Based Learning component

	September	1962 -	August	1993	
<u>raduate</u>	Grading	System			Grac

	June	1968	-	August	1993	

Undergraduate Grading System Graduate Grading System											
Α	SUPERIOR	F	FAILURE	ΑU	AUDIT	Α	EXCELLENT	F	FAILURE	U	UNSATISFACTORY
В	GOOD	W	WITHDRAWAL	ΙP	IN PROGRESS	B+	SUPERIOR	I	INCOMPLETE	ΑU	AUDIT
C	AVERAGE	•S	SATISFACTORY	NR	NO GRADE	В	GOOD	W	WITHDRAWAL	ΙP	IN PROGRESS
			(A,B,C)		REPORTED	C	FAIR	S	SATISFACTORY	NR	NO GRADE
D	PASSING	U	UNSATISFACTORY								REPORTED

E in column headed "R" indicates course excluded from Earned Hours and GPA I in column headed "R" indicates course excluded from Earned Hours only

IN COURSES APPLICABLE TO THE DEGREE SOUGHT, QUALITY POINTS ARE ASSIGNED AS FOLLOWS: A - 4, B - 3, C - 2, D - 1, F - 0

A PLUS SIGN AFTER A GRADE CARRIES AN ADDITIONAL .5 QUALITY POINT PER CREDIT

•CREDITS ADDED IN TOTAL EARNED, NOT IN THE QUALITY HOURS, OR Q.P.I.

NO QUALITY POINTS ARE ASSIGNED TO COURSES TAKEN AS A GRADUATE STUDENT

EXPLANATION OF THE UNDERGRADUATE AND GRADUATE COURSES NUMBERING SYSTEM COURSE LEVEL **NUMBERS**

UNDERGRADUATE ONLY	001 -	199
UPPERCLASS UNDERGRADUATE	200 -	299
UNDERGRADUATE TUTORIALS, READINGS, RESEARCH	300 -	349
UPPERCLASS UNDERGRADUATE & GRADUATE	350 -	499
GRADUATE LECTURES	500 -	699
GRADUATE SEMINARS	700 -	899
GRADUATE RESEARCH, TUTORIALS, READINGS	900 -	999
THESIS RESEARCH		999

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Record of: ID::

Delana Elizabeth Sobhani 818233539



GEORGETOWN UNIVERSITY
OFFICE OF THE UNIVERSITY REGISTRAR
WASHINGTON, D.C. 20057
(202)687-4020

Subj	Crs	Title Fall 2017	Crd	Control -	Pts	R
GOVT	261				9.99	
INAF	252	Intro to Econ & Pol Devt	3.00	A	12.00	
PECO	201	Analytical Tools for Pol Econ	3.00	Α	12.00	
PHIL	150	Beginning Logic	3.00	Α	12,00	
WGST	222	Reltnshp Vlnce &Sexual Assault	3.00	A //	12.00	
Subj	Crs	Second Honors	Crd	Grd	Pts	R
		Spring 2018	CIG	Gi u	3.5	
IPEC	401	Senior Capstone	3.00	A \	12.00	
	012	Strength Training II	0.00		0.00	
STIA		Global Health & Law	3.00		12.00	
WGST	253	Gender and Int Human Rights	3.00		12.00	
WGST	350	Gender and Sustainability First Honors	3.00	A IV	12.00	
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OWN UNITED STATES

Quantarie Bianco

Annamarie Bianco
Associate Vice President and University Registrar

GEORGETOWN UNIVERSITY EXPLANATION OF GRADING SYSTEM Effective Fall 1993

	Undergra	aduate Grading System	Graduate Grading System					
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В	3.00	Good	В	3.00				
B-	2.67		B-	2.67				
C+	2.33		С	2.00				
C	2.00	Average	F	0.00				
C-	1.67		I		Incomplete			
D+	1.33		W		Withdrawal			
D	1.00	Minimum Passing	•S		Satisfactory			
F	0.00	Failure	●U		Unsatisfactory			
W		Withdrawal	AU		Audit			
•S		Satisfactory (A,B,C)	IP		In Progress			
●U		Unsatisfactory	NR		Grades not yet reported			
AU		Audit						
ΙP		In Progress						
NR		Grades not yet reported						
N		Incomplete (a temporary grade	No Qual	ity Points a	are presented on graduate records.			
		which must be resolved within						
		a specified time)						
FOR		um Quality Point Index of 2.0						
GRADUAT	ION: b) 120 to	o 142 semester hours, depending						
	on the i	ndividual program.						

SEMESTER IS 15 WEEKS

*Not included in the quality hours or Q.P.I.

Grades for courses taken in overseas study programs are recorded as given at the host institution.
"CBL": indicator of Community Based Learning component

September 1962 - August 1993			June 1968 – August 1993								
Undergraduate Grading System				<u>Gr</u>	Graduate Grading System						
Α	SUPERIOR	F	FAILURE	ΑU	AUDIT	Α	EXCELLENT	F	FAILURE	U	UNSATISFACTORY
В	GOOD	W	WITHDRAWAL	ΙP	IN PROGRESS	B+	SUPERIOR	I	INCOMPLETE	ΑU	AUDIT
C	AVERAGE	•\$	SATISFACTORY	NR	NO GRADE	В	GOOD	W	WITHDRAWAL	ΙP	IN PROGRESS
			(A,B,C)		REPORTED	C	FAIR	S	SATISFACTORY	NR	NO GRADE
D	PASSING	U	UNSATISFACTORY								REPORTED

E in column headed "R" indicates course excluded from Earned Hours and GPA I in column headed "R" indicates course excluded from Earned Hours only

IN COURSES APPLICABLE TO THE DEGREE SOUGHT, QUALITY POINTS ARE ASSIGNED AS FOLLOWS: A - 4, B - 3, C - 2, D - 1, F - 0

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 $\bullet \textsc{CREDITS}$ ADDED IN TOTAL EARNED, NOT IN THE QUALITY HOURS, OR Q.P.I.

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UPPERCLASS UNDERGRADUATE	200 - 299
UNDERGRADUATE TUTORIALS, READINGS, RESEARCH	300 - 349
UPPERCLASS UNDERGRADUATE & GRADUATE	350 - 499
GRADUATE LECTURES	500 - 699
GRADUATE SEMINARS	700 - 899
GRADUATE RESEARCH, TUTORIALS, READINGS	900 - 999
THESIS RESEARCH	999

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SCRIP-SAFE* Security Products, Inc., Cincinnati, OH

Guy-Uriel Charles Harvard Law School Charles Ogletree, Jr. Professor of Law Lewis 309, Cambridge, MA 02138 617-998-1742

June 26, 2023

The Honorable Morgan Christen Old Federal Building 605 West Fourth Avenue, Suite 252 Anchorage, AK 99501-2248

Dear Judge Christen:

Delana Sobhani is an exceptional analytical thinker who loves to work research and write about legal problems. At the same time, she is also quite comfortable, an in fact enjoys, thinking about big policy questions and how those questions intersect with law. She is a rare student who can operate on multiple planes, the micro as well as the macro. She is one of the best students in her class. She has earned a grade of "honors" in almost all of her classes.

It is easy to see from her record that she is a person with a tremendous amount of talent. What is less evident from her record is how hard she works. She puts in the work before she speaks. She is not one to simply jump in if she does not have something to contribute. She is very deliberate.

Much of this was clear when she was a student in my Civil Procedure class. It was easy to tell from her class participation that she has a razor-sharp mind and a very supple mind. It was also clear that she was always prepared. But it was not until she came to office hours, and I talked to her outside of class that I was able to see how hard she worked. She only made it look easy.

She wrote an excellent paper for my Critical Race Theory seminar. The paper was about how law categorizes people from the Middle East. They are treated as "white" and as outsiders. The paper traces the history and makes a compelling argument for reform. In the paper, Ms. Sobhani very nicely combines doctrinal analysis with theoretical analysis. This is a clear demonstration of her ability to apply cases and doctrine to an abstract and theoretical problem.

Ms. Sobhani is deeply committed to democracy and democratic governance. She comes by this commitment honestly. She was a Fulbright in Morocco researching women's political participation. She has devoted a significant amount of her time here at HLS to the Housing Clinic. She is someone who will make a difference wherever she is.

She has all of the qualities to be a remarkable law clerk. She works hard and takes instructions easily. She is a self-starter. She is careful and meticulous. I have also seen a tremendous amount of growth from her between her first year and her second year. She is more comfortable expressing her opinions and taking positions. Thus, even though she is a super student and a great person, she continually seeks challenges and tries to be a better lawyer and a better human. I am confident that she will succeed in whatever Chambers that is lucky to attract her. I, therefore, give her my highest recommendation.

Sincerely,

Guy-Uriel Charles Charles Ogletree, Jr. Professor of Law June 26, 2023

The Honorable Morgan Christen Old Federal Building 605 West Fourth Avenue, Suite 252 Anchorage, AK 99501-2248

Dear Judge Christen:

I'm delighted to recommend Delana Sobhani for a clerkship in your chambers. Delana will be an outstanding clerk, bringing to chambers a strong mix of high intelligence, careful attention to detail, and principled character. I have known Delana since September of 2021, when she joined my forty-person First-Year Legal Research and Writing (LRW) section. Over the course of our full-year class, I had the opportunity to interact with Delana both in class and in several one-on-one conferences about her written work. We also met regularly in office hours to discuss career plans, current events, and the process of adjusting to law school. In the fall semester, focused on predictive memo writing, Delana was one of the top students in the class, earning one of only three Dean's Scholar Prizes for her outstanding memo writing. In the spring, focused on appellate brief-writing, she and her moot court partner easily earned an Honors for their incisive, persuasive advocacy. With her combination of outstanding legal skills, elegant writing style, and thoughtful demeanor, Delana will make a terrific law clerk. Let me say a bit more about each of these qualifications.

Delana hit the ground running in law school, as her strong transcript shows. In my class, she brought already-outstanding research skills to bear on our assignments and worked thoughtfully to master the somewhat alien form of legal writing. (Delana worked for three-and-a-half years between college and law school at the Berkeley Research Group, experience that not only helped sharpen her research and writing but also gave her maturity and perspective that have helped her approach law school.) Delana was receptive to feedback, always coming to our conferences prepared with questions and comments in response to my written criticism. We had lots of fun discussions about ways to keep elegance and spark in legal writing despite the rigid constraints of the form—and Delana delivered. She developed a real skill at explaining precedent clearly and concisely and applying it to new sets of facts. She loves research and was passionate from day one about digging into Lexis & Westlaw to run down every last thread.

Delana has also pursued every opportunity to hone her legal writing over the past year, reflecting not just her innate talent but also her commitment to growth. She took on several independent writing projects, on topics ranging from human rights, to bankruptcy and corporate accountability, to the uneasy relationship between police unions and labor writ large. For each of these, we met to discuss her ideas, and I was consistently impressed by her thorough approach to research, her willingness to take feedback and adjust her approach, and her ability to juggle multiple projects at once, all qualities that will serve her well as a law clerk. In addition to her independent writing, Delana engaged in substantial legal writing through the Housing Law Clinic under the supervision of Julia Devanthery, writing under separate cover. All this work is in addition to her first-year summer internship at the Criminal Appeals Bureau at the Legal Aid Society, where, among things, she drafted a clemency petition that was granted by the governor this fall.

Delana plans a career either in criminal appeals (she is interning this summer at the capital habeas unit of the Federal Community Defender Office in Philadelphia) or impact litigation, both paths for which a clerkship will be especially helpful. But more than the preparation a clerkship would provide, Delana is eager to clerk for the work itself—she is eager to dig into a wide range of legal questions and collaborate as a member of a close-knit team. She highlights teamwork as a particular skill, and I saw it firsthand in her peer editing in LRW, where she carefully reviewed her colleagues' work and provided constructive, detailed feedback. Delana has also collaborated with fellow students in her extracurricular activities, including the Civil Rights-Civil Liberties Law Review, the Prison Legal Assistance Project, and the Middle Eastern and North African Law Students Association.

Finally, Delana would be an asset to the broader chambers community. She is soft-spoken but confident in conversation, with wit and allusive skill. She reads widely both within and beyond the law and enjoys cycling and spending time outdoors with her family and friends. Despite managing a challenging courseload and extensive public service work, Delana takes a calm and balanced approach to the stresses of law school that will serve her well as she embarks on her career.

In short, I recommend Delana with great enthusiasm and no reservations. Please do not hesitate to contact me if I can provide further information about this excellent candidate. You can reach me by phone at (617) 496-3673 or via email at stobin@law.harvard.edu.

Sincerely,

Susannah Barton Tobin Managing Director, Climenko Program Assistant Dean for Academic Career Advising

Susannah Barton Tobin - stobin@law.harvard.edu - 617-496-3673

June 26, 2023

The Honorable Morgan Christen Old Federal Building 605 West Fourth Avenue, Suite 252 Anchorage, AK 99501-2248

Dear Judge Christen:

I write on behalf of Delana Sobhani, who is applying to you for a judicial clerkship position. Delana is brilliant, public-spirited, hardworking, and self-possessed. I am happy to recommend her highly, and without reservation.

In the fall and spring of this academic year, Delana was one of 25 students each semester in a course I teach called "Critical Corporate Theory Lab." The Lab is an unusual course. In it, the students are tasked as a group with running, expanding, promoting, and creating content for an online magazine, The law (theflaw.org). Each semester students work together as one large group to make larger decisions about the magazine, in smaller working groups to manage more specialized tasks, and individually in their reporting and writing for the magazine. (If you're interested you can review the magazine at the following url: theflaw.org.) In all of those efforts, Delana's contributions were exemplary.

The articles she wrote in each semester are superb. In the Fall, Delana wrote a fascinating article, titled "A New Dawn for Corporate America," in which she examined how large corporate actors have increasingly used bankruptcy to evade accountability. That article was so impressive that I invited her to present it at a two-day conference this January. Her presentation was, as I anticipated, one of the day's highlights. This spring she managed to write an even better article, titled "Police Unions and the Labor Movement." It is painstakingly researched and reflects impressive reporting and excellent writing on a nuanced and timely topic. Once published later this summer, it will be, in my opinion, among the most impressive and important articles on the website.

Beyond her own exceptional writing, Delana's enthusiasm for the larger project, as well as her thoughtfulness and warmth in working with others have been vital to building a friendly and productive class environment. Regarding her contributions to her working group, her teammates, when responding to an end-of-semester survey asking if there was any one student who they felt stood out, had these nice things to say:

- 1. "Delana brought so many well-thought-out contributions to class and I really enjoyed working with her."
- 2. "I felt really lucky to be working with Delana on our team. I could always, always count on her to be present, thoughtful, and thorough in our meetings."
- 3. "Delana always proactively booked us a study room for our meetings, and I really appreciated that!"
- 4. "It was a really strong team and everyone put in a lot of work, but Delana stood out. She was very on-top of what we needed to accomplish and what time lines we should follow."

I concur. In fact, Delana made several of the most insightful and constructive comments during our larger class discussions and impressed me as one of the most thoughtful students I have ever taught. She was simply a joy to have in the course and was a wonderful team-player and leader.

Based on those very positive experiences with Delana, I am confident that she would be a welcome and valuable addition to almost any chambers. I hope you will give her application your serious consideration.

Sincerely,

Jon D. Hanson Alan A. Stone Professor of Law

Delana Sobhani

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WRITING SAMPLE

Drafted Fall 2021 Legal Research and Writing Course Final Assignment

Attached is a memorandum that contains only my individual work. I submitted it as my final assignment for my 1L Legal Research and Writing course after receiving feedback on a draft from my professor.

MEMORANDUM

To: Jane M. Bolin, Assistant U.S. Attorney, Civil Division Chief

From: Delana Sobhani Date: November 23, 2021

Re: Kovacs v. United States, No. 2:20-CV-0014—Motion to Dismiss FTCA Suit Pursuant to

the Scope of Employment Requirement and Discretionary Function Exception

Questions Presented

Peter Kovacs is suing the federal government in the United States District Court for the District of Minnesota for injuries he and his son sustained in a bear attack at Voyageurs National Park in Minnesota. The attack occurred after park rangers drunkenly tore down bear warning signs in accordance with the park manger's sign replacement plan, leaving the campsite without warning signs in the days following a previous bear attack. The United States seeks to win the case on a 12(b)(1) motion to dismiss by showing that Plaintiffs cannot sue under the Federal Tort Claims Act ("FTCA").

- I. Can the United States succeed on the argument that it is not liable for the park rangers' conduct under the FTCA because they acted outside the scope of their employment pursuant to Minnesota law?
- II. Can the United States succeed on the argument that the park manager's decisions fall within the discretionary function exception to the FTCA?

Brief Answers

- I. Probably not. The park rangers' removal of the bear warning signs satisfies Minnesota's scope of employment test because their on-duty conduct at the park furthered the United States' interests and was both authorized and reasonably foreseeable by the United States.
- II. Probably yes. The park manager's decisions to develop and deploy the sign replacement plan fall within the discretionary function exception to the FTCA because his decisions

1

were discretionary and implicated socio-economic policy considerations such as visitor safety and budget management.

Facts

Plaintiff Peter Kovacs has filed suit against the United States on behalf of himself and his minor son, A.K., to recover damages for injuries they sustained in a bear attack at Voyageurs National Park in Minnesota (the "Park"). Plaintiffs allege that their injuries arose out of the negligence of National Park Service employees John Coltrane (the "Park Manager") and Sarah Vaughan and John Gillespie (together, the "Park Rangers"), all of whom have a responsibility to promote "visitor protection and services" pursuant to the Position Classification Standard for Park Ranger Series, GS-0025 (the "Classification Standard"). R at 16.

On May 31, 2020, the Park Manager emailed park rangers directing them to remove the "old, crumbling bear warning signs at all campsites" so that contractors could install new signs due to arrive later that week. R. at 1-2, 10. Although this plan would temporarily leave some sites without signs, he explained that they lacked the resources to hire short-term workers to remove the old signs as new ones arrived. R. at 10. The next day, a bear killed a girl near the Park's Lewis Campsite. The National Park Service sent agents to track and euthanize it, although they did not successfully capture the bear until after the attack at issue in this case. R. at 2.

On June 2, the Park Manager instructed the Park Rangers to continue removing the bear warning signs but to take down the signs near the Lewis Campsite last. R. at 8. The new signs were delayed, and on the afternoon of Saturday, June 13, the Park Manager emailed the Park Rangers, "if you get this in time, please put off removing" the Lewis Campsite signs since the contractors were not going to replace them until Monday. R. at 10. The Park Rangers responded that they had already removed the signs, to which the Park Manager replied, "that shouldn't be

an issue, I expect nothing will happen over the weekend." *Id.* The Park Manager did, however, reprimand the Park Rangers for drunkenly hacking the signs to pieces so that they could "have some fun" during their usual Saturday night drinks. R. at 11. He stated he has "generally been fine with" their weekly drinks but instructed them to keep their drinking discreet. *Id.*

On Monday, June 14, Plaintiffs went to the Lewis Campsite, which had no bear warning signs. The same bear from the June 1 attack then ambushed Plaintiffs, who suffered physical harm and mental anguish. R. at 3. A.K. sustained severe injuries and permanent disability. *Id.* Plaintiffs allege that the negligence of (1) the Park Rangers in removing the signs and (2) the Park Manager in developing a sign replacement plan that would leave the Lewis Campsite without warning signs were the factual and legal cause of their injuries. R. at 3-4.

Discussion

The federal government can likely dismiss the case for lack of subject matter jurisdiction, Fed. R. Civ. P. 12(b)(1), on the argument it is not liable for the Park Manager's decisions under the FTCA. For a 12(b)(1) motion to dismiss, Plaintiffs bear the burden of proving that the court may assert subject matter jurisdiction over the claim at issue. *See V S Ltd. P'ship v. Dep't of Hous. & Urban Dev.*, 235 F.3d 1109, 1112 (8th Cir. 2000). The court lacks subject matter jurisdiction if Plaintiffs cannot sue the United States under the FTCA, which does not apply if employees' (1) conduct was outside the scope of employment, 28 U.S.C. § 2679(d)(1), or (2) decisions fall within the discretionary function exception. 28 U.S.C. § 2680(a). Although the court will likely determine that the Park Rangers acted within the scope of their employment, the court will probably find that the Park Manager's decisions are protected under the discretionary function exception.

I. The Park Rangers acted within the scope of their employment pursuant to Minnesota law.

Under the FTCA, the United States is not liable for government employees' conduct if they were acting outside the scope of their employment. 28 U.S.C § 2679(d)(1). The law of the state where the conduct occurred is the applicable substantive law determining whether the conduct falls within the scope of employment. *See, e.g., Wollman v. Gross*, 637 F.2d 544, 547 (8th Cir. 1980). At Minnesota common law, an employee's alleged negligence is within the scope of employment if: "his conduct was, to some degree, in furtherance of the interests of his employer;" "the conduct is of the kind that the employee is authorized to perform;" "the act occurs within authorized time and space restrictions," *Edgewater Motels, Inc. v. Gatzke*, 277 N.W.2d 11, 15 (Minn. 1979); and "the employer should reasonably have foreseen the employee's conduct," *Hentges v. Thomford*, 569 N.W.2d 424, 428 (Ct. App. Minn. 1997). Because park rangers are on duty 24 hours a day while in the Park, the "time and space" restrictions prong is not disputed in this case.

The court will likely find that the Park Rangers acted within the scope of their employment pursuant to the multi-factor test established by Minnesota law. The relevant conduct for the scope of employment analysis is the allegedly negligent act that caused the plaintiff's injury. See, e.g., Edgewater Motels, Inc. v. Gatzke, 277 N.W.2d at 16. Plaintiffs contend that the Park Rangers caused their injuries by negligently removing bear warnings signs from the Lewis campsite. R. at 3. Thus, the conduct at issue is the Park Rangers' removal of the bear warning signs. Applying Minnesota's multi-factor test to this conduct, the court will likely find that the Park Rangers acted within the scope of their employment.

A. The Park Rangers' conduct was in furtherance of the United States' interests.

For an employee's conduct to be in furtherance of their employer's interests, it must serve the employer "at least in part" or "to some degree." *See Hentges v. Thomford*, 569 N.W.2d at 428;

4

Edgewater Motels, Inc. v. Gatzke, 277 N.W.2d at 15. The employee's state of mind is relevant to this determination, Hentges v. Thomford, 569 N.W.2d at 428, such that an act motivated by an intent to perform a task for work is in furtherance of the employer's interests. Edgewater Motels, Inc. v. Gatzke, 277 N.W.2d at 15 (referencing Restatement Agency 2d, § 235). When a work-related act is accompanied by conduct that deviates from an employee's strict course of duty, the conduct is still in furtherance of the employer's interests if the main purpose of the work-related act is to carry out the interests of the employer. Id. at 16; see also Mosby v. McGee, No. CIV 07-3905 JRT/RLE, 2009 WL 2171104, at *4 (D. Minn. July 20, 2009).

The Park Rangers removed the old bear warning signs in furtherance of the United States' interests to efficiently manage park resources and facilitate visitor safety. In *Edgewater Motels, Inc. v. Gatzke*, the court found that an employee whose negligent smoking started a motel fire during a work trip was acting in furtherance of his employer's interests because he was filling out an expense report for his employer at the time. *Edgewater Motels, Inc. v. Gatzke*, 277 N.W.2d at 17. Like Gatzke, whose negligent conduct occurred while performing a task to promote his employer's business interests in keeping detailed financial records, the Park Rangers' allegedly negligent conduct occurred while they performed a task to promote the United States' interests in efficiently maintaining a safe National Park. The Park Rangers removed the old, crumbling bear warning signs to ensure that contractors could install new signs. While it is true that the Park Rangers drunkenly hacked the signs with a hatchet to "have some fun," R. at 11, their primary purpose in removing the signs was to complete a task for work, so their conduct was still serving the United States. As such, the court will likely find that the Park Rangers' removal of the bear warning signs was in furtherance of the United States' interests.

B. The Park Rangers' conduct was authorized by the United States.

The Minnesota courts have not defined employer-authorized conduct in common law tort liability cases; however, workers' compensation cases are instructive because they invoke a similar scope of employment analysis, despite their specific statutory basis. *See*, *e.g.*, *Stringer v. Minn. Vikings Football Club*, *LLC*, 705 N.W.2d 746, 761 (Minn. 2005) (finding that "acting within the course and scope of employment is what brings the coemployee within the protection of the workers' compensation system"). Conduct is authorized in workers' compensation cases if it is either (1) required by the employer, *see id.*, or (2) incidental to the nature of the employment. *Cf. Weidenbach v. Miller*, 237 Minn. 278, 291 (Minn. 1952). The performance of authorized acts in a prohibited manner is distinct from the performance of prohibited acts, such that the conduct of an employee who improperly does what they are directed to do is still authorized. *See Lange v. Minneapolis-Saint Paul Metropolitan Airports Com.*, 257 Minn. 54, 57 (Minn. 1959); *Bartley v. C--H Riding Stables, Inc.*, 296 Minn. 115, 118-119 (Minn. 1973).

Because the Park Rangers' removal of the bear warning signs was both explicitly directed by the Park Manager and incidental to their work as Park Rangers, the court will likely find that their conduct was authorized by the United States. In *Murray v. United States*, the court ruled that a National Guard trainee's choice to drive herself and her friend to school, as she routinely did, was not authorized because her National Guard orders did not mandate a type of transportation or route for her to take to school. *Murray v. United States*, 258 F. Supp. 2d 1006, 1013 (D. Minn. 2003). In contrast to the National Guard trainee in *Murray*, the Park Rangers were following direct orders. After the June 1 bear attack, the Park Manager instructed the Park Rangers to continue removing bear warning signs, thereby expressly authorizing the Park Rangers' conduct. R. at 8. While the Park Manager later told the Park Rangers to wait to

remove the signs at the Lewis Campsite, when he learned they had already done so, he stated that "it shouldn't be a problem" and did not instruct the Park Rangers to take further action. *Id.* at 10.

Furthermore, the Park Rangers' conduct was authorized because removing bear warning signs is incidental to the work of park rangers. The Classification Standard establishes visitor protection as a park ranger responsibility, R. at 15-16, which the court may logically infer includes the replacement of old, crumbling bear warning signs at campsites. Although the Park Rangers may have removed the signs in an improper way by drunkenly hacking them to pieces, the act of removing the signs themselves was still authorized conduct. *See Bartley v. C--H Riding Stables, Inc.*, 296 Minn. at 118-119 (holding that specifically prohibited acts, as opposed to legitimate acts accomplished in a forbidden manner, are outside the scope of employment). Thus, the court will likely find that the United States authorized the Park Rangers' conduct.

C. The United States should reasonably have foreseen the Park Rangers' conduct.

While the Minnesota courts have addressed the "reasonably foreseeable" prong in the context of employer liability for intentional torts, the courts have yet to rigorously apply this analysis to negligent misconduct. The standard for intentional torts is that an employer need not actually foresee the alleged misconduct if it is "not so unusual or startling that it would seem unfair to include the loss resulting from it among other costs of the employer's business." *Hagen*, 633 N.W.2d at 505 (quoting *Fahrendorff*, 597 N.W.2d at 912).

In comparison, the sparse rulings on negligent misconduct link foreseeability to employer control. *See Murray v. United States*, 258 F. Supp. 2d at 1013; *Western National Mutual Insurance Co. v. United States*, 964 F. Supp. 295, 297-98 (D. Minn. 1997). The court may evaluate the foreseeability of the Park Rangers' conduct in a manner consistent with the standards for both tortious and negligent misconduct, such that the conduct is reasonably

foreseeable if the employer provides policies on (1) whether to engage in the conduct, *cf. Miles v. Simmons Univ.*, 514 F. Supp. 3d 1070, 1077 (D. Minn. 2021), and if permitted, (2) how to engage in the conduct, *cf. Murray v. United States*, 258 F. Supp. 2d at 1013.

The court will probably find that the United States should reasonably have foreseen the Park Rangers' removal of the bear warning signs because the Classification Standard provides guidance on whether and how to engage in such conduct to promote visitor safety. In *Miles v. Simmons Univ.*, the court held that the plaintiff failed to show that Simmons University could have reasonably foreseen that a professor would post a class recording that displayed a student using the restroom because the plaintiff did not establish that the University had adopted confidentiality policies instructing professors on whether and how to avoid sharing students' personal information via Zoom. *See Miles v. Simmons Univ.*, 514 F. Supp. 3d at 1077. Unlike Simmons University, the United States adopted the Classification Standard to instruct park rangers to "carry out resource management and protection work." R. at 17. Insofar as Plaintiffs amend their complaint to show that the Classification Standard demonstrates that removing bear warning signs was reasonably foreseeable, the court will likely hold that the United States should reasonably have foreseen the Park Rangers' conduct.

II. The Park Manager's decisions likely fall under the discretionary function exception to the FTCA.

The discretionary function exception provides the federal government with immunity against liability for claims "based upon an act or omission of an employee of the Government, exercising due care...or based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a federal agency or an employee of the Government." 28 U.S.C § 2680(a). This exception applies if a government employee's decision was (1) discretionary and (2) implicated public policy considerations. See Berkovitz by Berkovitz

v. United States, 486 U.S. 531, 108 S. Ct. 1954, 100 L. Ed. 2d 531 (1988). Plaintiffs have not claimed that, nor does there appear to exist, any regulation that mandated a particular course of action by the Park Manager, so the "discretionary" prong of the Berkovitz test is not in dispute. Because the Park Manager's decisions to develop and deploy a bear warning sign replacement plan were discretionary and most likely implicated public policy considerations, the discretionary function exception will likely apply to the Park Manager's decisions.

When governmental policy permits the exercise of discretion, it is presumed that the act is grounded in policy, so the plaintiff must offer evidence to rebut that presumption. *See United States v. Gaubert*, 499 U.S. 315, 325 (1991). As an affirmative defense, the federal government must show only that the decision was "susceptible to policy analysis." *Id.* Decisions that (1) require weighing competing issues and (2) involve social, economic, or political considerations are susceptible to policy analysis. *See United States v. Gaubert*, 499 U.S. at 325; *Chantal v. United States*, 104 F.3d 2017, 212 (8th Cir. 1997); *Metter v. United States*, 785 F.3d 1227, 1233 (8th Cir. 2015). Since "the decision to warn is, at its core, a policy decision," *Croyle by and through Croyle v. United States*, 908 F.3d 377, 381 (8th Cir. 2018) (quoting *Hinsley*, 516 F.3d at 673), a subsequent decision to revise a warning policy is itself a decision that implicates public policy considerations. *See Metter v. United States*, 785 F.3d 1227 at 1233.

The court will likely find that the Park Manager's decisions to develop and deploy a sign replacement plan implicated public policy. In *Metter v. United States*, the court held that decisions by the U.S. Army Corps of Engineers ("Corps") to remove and re-install guardrails along a road implicated public policy because the Corps' decisions on if, when, and how to replace the guardrails involved balancing the purpose of the road, the allocation of funds, the timing of repairs and maintenance work, and the safety of drivers. *Metter v. United States*, 785

F.3d 1227 at 1233. Likewise, the Park Manager's decisions on if, when, and how to replace the bear warning signs involved balancing the purpose of the Park, the budget, the timing of sign removal and the contractors' re-installation, as well as visitor safety. Because the Park Manager weighed similar economic and safety factors as the Corps in *Metter*, the Park Manager's decision also implicated public policy considerations.

While Plaintiffs could argue that the recent bear attack created a duty for the Park Manager to postpone the sign replacement plan, the court will likely still find that the Park Manager's decisions implicated public policy. It is true that the Park Manager could have kept the existing signs up until the offending bear was caught to avoid leaving campsites without warnings; however, just because the Park already had bear warning signs does not erase the policy considerations inherent to the decisions on how to warn. *See Demery v. U.S. Dep't of Interior*, 357 F.3d 830, 833 (8th Cir. 2004) (rejecting Plaintiff's argument that once a governmental agency has decided to issue warnings, the decision on how to warn is not susceptible to policy analysis because then the government would be unreasonably open to suit). As such, the court will likely find that the Park Manager's decisions implicated public policy considerations and therefore fall within the discretionary function exception.

Conclusion

Although the Park Rangers' removal of the bear warning signs was probably within the scope of their employment, the federal government will likely prevail on a 12(b)(1) motion to dismiss because the Park Manager's decisions to develop and deploy a sign replacement plan were susceptible to public policy analysis and are thus protected under the discretionary function exception to the FTCA.

Applicant Details

First Name Kate
Middle Initial G

Last Name Walford
Citizenship Status U. S. Citizen

Email Address <u>walfordk@berkeley.edu</u>

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672 Alcatraz Ave

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Zip 94609

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Applicant Education

BA/BS From University of Washington

Date of BA/BS June 2014

JD/LLB From University of California, Berkeley

School of Law

https://www.law.berkeley.edu/

careers/

Date of JD/LLB May 1, 2024

Class Rank School does not rank

Does the law school have a Law

Review/Journal?

Yes

Law Review/Journal No Moot Court Experience Yes

Moot Court Name(s) Traynor California Appellate

Advocacy Competition

Bar Admission

Prior Judicial Experience

Judicial Internships/Externships No
Post-graduate Judicial Law
Clerk
No

Specialized Work Experience

Recommenders

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References

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Kate Walford

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June 23, 2023

The Honorable Morgan Christen United States Court of Appeals Ninth Circuit Old Federal Building 605 West Fourth Avenue, Suite 252 Anchorage, AK 99501-2248

Dear Judge Christen,

I am a rising third-year law student at the University of California, Berkeley, School of Law, and am writing to apply to a clerkship in your chambers for the 2025 term. As an aspiring plaintiff-side litigator, a federal appellate clerkship is an ideal opportunity to deepen my understanding of the federal judiciary and gain the skills necessary to serve others through my legal practice. Having grown up in the pacific northwest, I have had the chance to visit Alaska and would be delighted and honored to serve the region and community.

My non-traditional path to a legal career has informed my desire to pursue a career in public interest. Prior to law school, I obtained a master's degree in educational leadership and policy and spent seven years working in the higher education field. While managing student employment at Reed College, I oversaw compliance with employment law and developed a strong interest in the legal field and workers' rights in particular. I found the issues faced by young, low-income student workers complex and compelling, and even more so as the pandemic cut their hours and exposed them to the risk of serious illness. Witnessing the deep individual impact that the rapid changes in law during the pandemic had on these workers inspired me to attain a law degree in hopes of advocating for students and workers on a broader scale.

Starting my legal career in public service will allow me to develop the research, writing, and communication skills necessary to litigate on behalf of future clients. I am particularly drawn to appellate work after my moot court experience, arguing a case currently before the California Supreme Court. I was assigned to argue against a bill written by Equal Rights Advocates, the nonprofit I was externing for at the time. This challenged me to consider new aspects of the issue at hand as I came to agree with some legitimate concerns of those opposing the legislation. I found deep satisfaction in the rigorous and meticulous research which goes into resolving a complex legal issue, and further appreciated the value of a neutral and thoughtful judiciary. I am eager to continue to hone these analytical skills by working on the complex legal issues before federal appellate courts.

Please find my resume, law school transcript, undergraduate and master's transcripts, writing sample, and letters of recommendation included in my application. I believe that my significant professional experience, academic achievements, and collaborative and curious perspective will make me both an asset to your chambers and provide me a strong foundation on which to build as a law clerk. I would appreciate the chance to discuss my qualifications for a position in your chambers further. Thank you for your time and consideration.

Highest regards,

Kake Walked

Kate Walford

Kate G. Walford

672 Alcatraz Ave., Oakland, CA 94609 | 206.446.8125 | walfordk@berkeley.edu

EDUCATION

University of California, Berkeley, School of Law, Berkeley, CA

J.D. Candidate, May 2024

Honors: 2L Berkeley Law Scholar (One of the Top Three Students); 1L Academic Distinction (Top 10%)

Jurisprudence Award (first in class): Civil Procedure Fall 2021 & Employment Law Spring 2023

Prosser Prize (second in class): Civil Field Placement Ethics Seminar Fall 2022

Activities: Co-President, Berkeley Plaintiffs' Law Association; Moot Court Traynor California Appellate

Competition (Team Best Brief Award, Individual Merit Award for Oral Argument); Research Assistant for Professor David Oppenheimer; Legal Research & Writing and Written & Oral

Advocacy Courses Tutor; Workers' Rights Clinic Student Counselor

Portland State University, Portland, OR

M.A., Educational Leadership and Policy, June 2017

Activities: Graduate Assistant, Student Athlete Support Services (20+ hours/week)

University of Washington, Seattle, WA

B.A., magna cum laude, Community, Environment, and Planning, June 2014

Honors: Mary Gates Endowment for Leadership

EXPERIENCE

Equal Employment Opportunity Commission, Washington, D.C. (remote)

Administrative Law Judge Clerk-Intern Aug. 2023 – Dec. 2023

Gibbs Law Group LLP, Oakland, CA

Summer Associate June 2023 – Aug. 2023

Equal Rights Advocates, San Francisco, CA

Law Clerk

Aug. 2022 – May 2023

Performed client intakes for students and workers seeking legal advice. Drafted legal research memos, decision analyses, and litigation proposals in support of Title IX and employment litigation and policy initiatives.

Public Advocates, San Francisco, CA

Summer Law Clerk, Education Equity Team

June 2022 – Aug. 2022

Drafted legal research and strategy memos related to state education law. Reviewed school district budget data for legal compliance and drafted legal advocacy letters to districts and state agencies.

Reed College, Portland, OR

Student Work Coordinator

Sept. 2018 - Aug. 2021

Independently oversaw all aspects of the Student Work Office. Managed communication, training, and support for 800+ student workers and 150+ supervisors. Consulted with students and supervisors regarding hiring, workplace conflict, employee performance, and legal concerns.

University of Portland, Portland, OR

Program Assistant, Shepard Academic Resource Center

Aug. 2017 – Sept. 2018

Managed administrative operations and student employee supervision for academic resource center.

Oregon Campus Compact AmeriCorps VISTA Program, Portland, OR

College Access & Mentoring Programs Coordinator

Aug. 2014 – Aug. 2015

Launched mentorship program connecting first-generation college students to K-12 students.

INTERESTS: Competitive roller derby, gardening, and backpacking

Berkeley Law University of California Office of the Registrar

Kate Gardner Walford Student ID: 3037352236 Admit Term: 2021 Fall

Printed: 2023-06-09 09:22 Page 1 of 2

Academic Program History Major: Law (JD)

Cumulative Totals 31.0 31.0

Awards

Jurisprudence Award 2021 Fall: Civil Procedure Prosser Prize 2022 Fall: Civ Field Placement Ethics Sem Jurisprudence Award 2023 Spr: Employment Law

		2021 Fall			
<u>Course</u>		<u>Description</u>	<u>Units</u>	Law Units	<u>Grade</u>
LAW	200F	Civil Procedure	5.0	5.0	HH
1.414/	004	David Oppenheimer			47.1
LAW	201	Torts Daniel Farber	4.0	4.0	Р
LAW	202.1A	Legal Research and Writing	3.0	3.0	CR
	202.171	Kerry Kumabe	0.0	0.0	OIT
LAW	230	Criminal Law	4.0	4.0	Н
		Jonathan Simon			
			Units	Law Units	
		Term Totals	16.0	16.0	
		Cumulativa Totals	16.0	16.0	

		202	2 Fall		
Course		Description	Units	Law Units	<u>Grade</u>
LAW	207.5	Advanced Legal W	riting 3.0	3.0	Н
		Fulfills 1 of 2 Writing Requirements			
		Lindsay Saffouri			
LAW	241	Evidence	4.0	4.0	HH
		Andrea Roth			
LAW	295	Civ Field Placemer	t Ethics 2.0	2.0	HH
		Sem			
			of. Resp. or Experie	ential	
		Susan Schechter Jessica Mark			
		Cheryl Stevens			
LAW	295.6A	Civil Field Placeme	nt 4.0	4.0	CR
	200.071				OIT
		Units Count Toward Experiential Requirement Susan Schechter			
			Linita	L our Linito	
		T Tel	<u>Units</u>	Law Units	
		Term Tot	als 13.0	13.0	
		Cumulati	ve Totals 44.0	44.0	

		2022 Spring				
Course		Description	<u>Units</u>	Law Units	<u>Grade</u>	
LAW	202.1B	Written and Oral Advocacy	2.0	2.0	Н	
		Units Count Toward Experie	ntial Red	uirement		
		Kerry Kumabe				
LAW	202F	Contracts	4.0	4.0	HH	
		Prasad Krishnamurthy				
LAW	220.6	Constitutional Law	4.0	4.0	HH	
		Fulfills Constitutional Law Requirement				
		Erwin Chemerinsky				
LAW	272.3	Climate Change & the Law	3.0	3.0	Н	
		Robert Infelise				
LAW	285.44	Consumer Law&Econ Justice	2.0	2.0	Р	
		Wrkp				
		Seth Mermin				
		Abbye Atkinson				

Term Totals

Units Law Units

15.0

Carol Rachwald, Registran

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Kate Gardner Walford Student ID: 3037352236 Admit Term: 2021 Fall

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		2023 Spring			
Course		Description	Units	Law Units	Grade
LAW	223	Administrative Law	4.0	4.0	HH
		Sharon Jacobs			
LAW	227.21	Employment Law	3.0	3.0	HH
		Todd Jackson			
LAW	244.62	Litigating Class Actions	1.0	1.0	CR
		Anne Bloom			
		Jocelyn Larkin			
LAW	295.3T	Roger J. Traynor Moot Crt	1.0	1.0	CR
		Comp			
		Natalie Winters			
LAW	295.6A	Civil Field Placement	2.0	2.0	CR
		Units Count Toward Experie	ential Rec	uirement	
		Susan Schechter			
LAW	295B	Field Placement Workshop	1.0	1.0	CR
		Units Count Toward Experiential Requirement			
		Susan Schechter			
		Brenda Adams			
LAW	297	Self-Tutorial Sem	2.0	2.0	CR
		David Oppenheimer			

			Units	Law Units	
		Term Totals	14.0	14.0	
		roiiii roidis	14.0		
		Cumulative Totals	58.0	58.0	

		2023 Fall			
<u>Course</u>		Description	<u>Units</u>	Law Units	<u>Grade</u>
LAW	231	Crim Procedure-	4.0	4.0	
		Investigations Units Count Toward Race a	nd Law R	equirement	
		Andrea Roth			
LAW	281	Family Law	4.0	4.0	
		Khiara Bridges			
			Units	Law Units	
		Term Totals	0.0	0.0	
		Cumulative Totals	58.0	58.0	

Carol Rachwald, Registrar

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KEY TO GRADES

1. Grades for Academic Years 1970 to present:

 HH
 High Honors
 CR
 Credit

 H
 Honors
 NP
 Not Pass

 P
 Pass
 I
 Incomplete

 PC
 Pass Conditional or Substandard Pass (1997-98 to present)
 IP
 In Progress

 NC
 No Credit
 NR
 No Record

2. Grading Curves for J.D. and Jurisprudence and Social Policy PH.D. students:

In each first-year section, the top 40% of students are awarded honors grades as follows: 10% of the class members are awarded High Honors (HH) grades and 30% are awarded Honors (H) grades. The remaining class members are given the grades Pass (P), Pass Conditional or Substandard Pass (PC) or No Credit (NC) in any proportion. In first-year small sections, grades are given on the same basis with the exception that one more or one less honors grade may be given.

In each second- and third-year course, either (1) the top 40% to 45% of the students are awarded Honors (H) grades, of which a number equal to 10% to 15% of the class are awarded High Honors (HH) grades or (2) the top 40% of the class members, plus or minus two students, are awarded Honors (H) grades, of which a number equal to 10% of the class, plus or minus two students, are awarded High Honors (HH) grades. The remaining class members are given the grades of P, PC or NC, in any proportion. In seminars of 24 or fewer students where there is one 30 page (or more) required paper, an instructor may, if student performance warrants, award 4-7 more HH or H grades, depending on the size of the seminar, than would be permitted under the above rules.

3. Grading Curves for LL.M. and J.S.D. students for 2011-12 to present:

For classes and seminars with 11 or more LL.M. and J.S.D. students, a mandatory curve applies to the LL.M. and J.S.D. students, where the grades awarded are 20% HH and 30% H with the remaining students receiving P, PC, or NC grades. In classes and seminars with 10 or fewer LL.M. and J.S.D. students, the above curve is recommended.

Berkeley Law does not compute grade point averages (GPAs) for our transcripts.

For employers, more information on our grading system is provided at: https://www.law.berkeley.edu/careers/for-employers/grading-policy/

Transcript questions should be referred to the Registrar.

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ACADEMIC TRANSCRIPT

WALFORD, KATE GARDNER	NATHAN HALE SR HS	04/16/23 1
1024447 XXX-XX-0374 12/29/XX		TRNSCRPT PORTF
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**************************************	ECORD * EDUC 401 PRACT COMM SI ONY * ENGR 380 SUSTAINABLE I TIONS. * SISLA 280 INDIGNOUS ENG ******** SPAN 302 W-GRAMMAR & I QTR ATTEMPTED: 1. AND CEP 200 S-INTRO COM SI G H 401 INTRO TOPICS HONORS 100 H-HONORS AT . PA: 3.81 HONORS 394 WH-H-INTERDI SPAN 303 W-ADVANCED ESRM 489 FOREIGN STUD: QTR ATTEMPTED: 2.	DESIGN 2.0 CR CONTERS 5.0 3.9 LEXICON 5.0 3.5 4.0 EARNED: 14.0 GPA: 3.70 SISLA 2 E ENV PLN 5.0 3.8 G H 1.0 W5 FHE UW 1.0 4.0 S STDY IV 5.0 3.7 5.0 2.6
EXTENSION/INDEPENDENT STDY/ADVANCE PLACEMENT ADVANCE PLACEMENT: ENGL 190 AP ENGL LANG 5.0	T CREDIT: QUARTER COMMENT: STUDY IN PERU SCHOLARSHIP STATU:	S: DEAN'S LIST
(06/01/10) SPAN 201 AP SPANISH LANGUAGE 5.0 (06/01/10) SPAN 202 AP SPANISH LANGUAGE 5.0 (06/01/10) TOTAL EXTENSION/CORRESPONDENCE/AP CREDIT:	15.0	IES 5.0 3.9 R STDS 5.0 3.8 5.0 EARNED: 15.0 GPA: 3.80
TOTAL APPLIED TOWARD NEXT DEGREE: COMMENT: STUDY IN PERU: BUILT ENVIRONMENTS DEPARTMENT PROGRAM IN LIMA 2011-2012. STUDY IN THE NETHERLANDS: CHID DEPARTMENTAL PROGRAM IN AMSTERDAM 2012-2013.	HONORS 222 WH-HONORS SC: URBDP 300 INTRO TO URB QTR ATTEMPTED: 1:	CEP 3 ES 5.0 3.9 LENCE 3 5.0 3.8 AN PLAN 5.0 3.8 5.0 EARNED: 15.0 GPA: 3.83
AUTUMN 2010 SISLA ENGL 198 W-WRITING/SOC SCI 5.0 GEN ST 199 UNIV COMMUNITY 2.0 GEOG 123 W-INTRO GLOBALIZATION 5.0 SPAN 203 INTERMEDIATE 5.0 QTR ATTEMPTED: 17.0 EARNED: 17.0 GE	3.8 ANNUAL DEAN'S LIST CR 3.9 SUMMER 2012 4.0 GEN ST 350 INDEPENDENT 1	2011-2012 CEP 3
SCHOLARSHIP STATUS: DEAN'S LIST WINTER 2011 SISLA ASTR 150 THE PLANETS 5.0 GEOG 276 W-INTRO POLIT GEOG 5.0 SPAN 301 GRAMMAR & LEXICON 5.0 QTR ATTEMPTED: 15.0 EARNED: 15.0 GI SCHOLARSHIP STATUS: DEAN'S LIST	4.0 CEP 301 IDEA OF COMM 4.0 CEP 400 GOV PRACTICUM 3.6 HONORS 220 WH-HONORS SC	1.0 CR JNITY 5.0 3.8 M 1.0 CR IENCE I 5.0 4.0 7.0 EARNED: 17.0 GPA: 3.90

*** CONTINUED ON PAGE 2 ***

KATE GARDNER WALFORD WALFORDK@BERKELEY.EDU



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ACADEMIC TRANSCRIPT

WALFORD, KATE GARDNER	NATHAN HALE SR HS	04/16/23	2
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*********************************** * ANY ALTERATION OR MODIFICATION OF * OR ANY COPY THEREOF MAY CONSTITUT: * AND/OR LEAD TO STUDENT DISCIPLINA: ***********************************	THIS RECORD * CEP 300 CEP RETREAT A FELONY * CEP 400 GOV PRACTICUM Y SANCTIONS. * CEP 462 W-COMMNTY & ENVIRM	1.0 C 4NT 5.0 4 OY 5.0 3	4 ER .0 .6 .: 3.80
WINTER 2013 ASL 102 ELEMENTARY ASL II CEP 302 ENV RESPONSE DANCE 230 ALTERNATIVE MVT STD EDUC 401 PRACT COMM SERV ACT PB AF 403 W-PROF LEADERSHIP QTR ATTEMPTED: 18.0 EARNED:	CEP 3 DEGREE EARNED 06 5.0 4.0 BACHELOR OF ARTS (COMMUNITY, E 5.0 3.9 PLANNING) 2.0 4.0 MAGNA CUM LAUDE 2.0 CR UW:206.0 TRANSFER: 0.0 EXTENS 4.0 3.7 WITH MINOR(S) IN COMP HIST OF 18.0 GPA: 3.89 EDUC, LEARNIN	ENVIRONMENT, AN SION: 15.0 GPA IDEAS	TD .
SCHOLARSHIP STATUS: DEAN'S L	ST ************************************		++++++
SPRING 2013 ASL 103 ELEMENTARY ASL III CEP 300 CEP RETREAT CEP 303 SOC STRCTRS & PROC CEP 400 GOV PRACTICUM CHID 298 PRE-DEPART SEMINARS EDC&I 453 TCH BIL/BICUL ST QTR ATTEMPTED: 14.0 EARNED:	CEP 4 CUMULATIVE CREDIT SUMMARY: 5.0 3.8 UW CREDITS ATTEMPTED 206.0 UW 1.0 CR UW GRADED ATTEMPTED 172.0 EX 5.0 3.7 UW GRADED EARNED 172.0 TR 1.0 CR UW GRADE POINTS 655.8 - 2.0 CR UW GRADE POINT AVG. 3.81 CR 3.0 HW ***********************************	V CREDITS EARNE KTENSION CREDIT KANSFER CREDITS REDITS EARNED	ED 206.0 ES 15.0 . 0.0
SUMMER 2013 CHID 480 ADV SPECIAL TOPICS CHID 390 COLLOQ HIST IDEAS CHID 471 EUROPE STUDY ABROAD QTR ATTEMPTED: 15.0 EARNED: QUARTER COMMENT: STUDY IN THE NETHERLANDS	CEP 4 5.0 4.0 5.0 4.0 5.0 4.0 15.0 GPA: 4.00		
SCHOLARSHIP STATUS: DEAN'S L	ST		
AUTUMN 2013 CEP 300 CEP RETREAT CEP 400 GOV PRACTICUM CEP 446 INTERNSHIP CEP 460 PLANNING IN CONTEXT CEP 490 SENIOR PROJECT I NURS 201 LIFESPAN GROWTH QTR ATTEMPTED: 18.0 EARNED:	CEP 4 1.0 CR 1.0 CR 5.0 CR 5.0 3.7 1.0 CR 5.0 3.9 18.0 GPA: 3.80		
WINTER 2014 CEP 400 GOV PRACTICUM CEP 461 ETHICS & IDENTITY CEP 491 W-SENIOR PROJECT II CHID 496 FOCUS GROUPS EDUC 210 EDUC &THE PLAYFIELD EDUC 299 ELS COLLOQUIUM QTR ATTEMPTED: 12.0 EARNED:	CEP 4 1.0 CR 5.0 3.8 3.0 CR 2.0 CR 3.0 W3 1.0 CR 12.0 GPA: 3.80		

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